PLAINTIFF'S EXHIBIT

CAP-1831



WORKSHOPS ON P.L. 92-500

THE 1972 AMENDMENTS TO THE FEDERAL WATER POLLUTION CONTROL ACT

Comments
Questions and Answers

The Water Pollution Control Federation was established in 1928 as a non-profit, technical membership organization. Its objectives are to advance the fundamental and practical knowledge of all aspects of water pollution control by the dissemination of technical knowledge through publications, technical conferences, improvement of the professional status of those working in the field, promotion of public understanding and participation, and encouragement of the adoption and implementation of sound regulations aimed toward effective water pollution control.

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Robert A. Canham ..... Executive Secretary
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WORKSHOPS ON P.L. 92-500

THE 1972 AMENDMENTS TO THE FEDERAL WATER POLLUTION CONTROL ACT

Comments
Questions and Answers

WATER POLLUTION CONTROL FEDERATION
3900 Wisconsin Avenue, N.W.
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Construction Grants—EPA Procedures Applicable to Wastewater Treatment for FY 1973; Effective 2-28-73, *Federal Register* Vol. 38, No. 36. — Appendix D

State Continuing Planning Process - Interim Regulations, March 27, 1973, *Federal Register* Vol. 38, No. 58. — Appendix E

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INTRODUCTION

The 1972 Amendments to the Federal Water Pollution Control Act became Public Law 92-500 October 18, 1972. P.L. 92-500 is generally considered one of the most complex pieces of technical legislation ever to emerge from Congress. Hearings on the act were begun early in the 92nd Congress. Measured in terms of numbers of statements received and pages of testimony alone, the hearings were more extensive than all those previously held by the Congress on water pollution control legislation. Further, it required 39 sessions of the Senate and House conferees and finally the overriding of a presidential veto to enact P.L. 92-500.

The Board of Control of the Federation, recognizing the need for encouraging Federation member association input, as well as to receive information and provide for participation in developing the processes of implementing the 1972 Amendments, authorized a pilot workshop to be held as soon as possible after enactment of the amendments. The pilot workshop held in Romulus (Detroit), Mich., December 12, 1972, was designed to convey the intent of Congress, discuss EPA's and other federal agencies' implementation problems, as well as provide a platform to discuss the various impacts on state and local governments and industry. The Detroit workshop proved highly successful and the Executive Committee, acting for the Board of Control, authorized additional workshops.

The pilot workshop, as well as the seven additional workshops held prior to the Federation's National Governmental Affairs Seminar in Washington, D.C., April 3, 1973, were developed in full cooperation with the EPA. Insofar as possible, a workshop was organized to encompass member associations (and states) that were contained within the boundaries of the EPA regions. A member association served as host for each workshop and the program chairman worked closely with the EPA regional office as the Federation headquarters office maintained a continuing contact with EPA-Washington, D.C., as program needs indicated.

Almost 2,000 registrants participated in the eight workshops held prior to the National Seminar April 3rd. The programs were designed to encourage comments, questions, and answers. These proved to be the key to the success of the workshop series.

The 1973 National Seminar culminates this effort by providing the forum to bring into sharp focus the problems and issues fundamental to progress under P.L. 92-500. This compendium of statements, comments, questions, and answers, given at the several workshops, has been published to facilitate their consideration in the present stage of development of federal and state regulatory and guideline policies vital to effective implementation of P.L. 92-500.

April, 1973

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WORKSHOP HOST AND CO-SPONSORING ASSOCIATIONS

HOST ASSOCIATIONS

Michigan Water Pollution Control Association
Romulus (Detroit), Michigan
December 12, 1972

California Water Pollution Control Association
Los Angeles, California
February 8, 1973

Georgia Water Pollution Control Association
Atlanta, Georgia
March 2, 1973

New England Water Pollution Control Association
Boston, Massachusetts
March 7, 1973

Rocky Mountain Water Pollution Control Association
Denver, Colorado
March 7, 1973

New York Water Pollution Control Association
New York, New York
March 15, 1973

Oklahoma Water and Pollution Control Association
Tulsa, Oklahoma
March 20, 1973

Water Pollution Control Association of Pennsylvania
Pittsburgh, Pennsylvania
March 23, 1973

CO-SPONSORING ASSOCIATIONS

Alabama Water and Pollution Control Association
Arizona Water Pollution Control Association
Arkansas Water Pollution Control Association
California Water Pollution Control Association
Florida Pollution Control Association
Georgia Water and Pollution Control Association
Hawaii Water Pollution Control Association
Kentucky-Tennessee Water Pollution Control Association
Louisiana Water Pollution Control Association
Mississippi Water Pollution Control Association
Montana Water Pollution Control Association
Michigan Water Pollution Control Association
Nevada Water Pollution Control Association
New England Water Pollution Control Association
New Jersey Water Pollution Control Association
New York Water Pollution Control Association
North Carolina Water Pollution Control Association
North Dakota Water Pollution Control Association
Oklahoma Water and Pollution Control Association
Water Pollution Control Association of Pennsylvania
Rocky Mountain Water Pollution Control Association
South Carolina Water Pollution Control Association
South Dakota Water Pollution Control Association
Texas Water Pollution Control Association
Utah Water Pollution Control Association
West Virginia Water Pollution Control Association

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MANAGEMENT AND PLANNING

MANAGEMENT & PLANNING
TITLES I, II AND III OF P. L. 92-500

The prime mechanism of the water planning program (Section 303 of the Act) as seen by EPA is the concept of program management; in this, the first requirement is developing a national strategy. Such a strategy will describe national objectives and priorities with enough flexibility to allow the states to adjust it to meet their particular problems.

A next step in the process is for each state to develop a strategy (Section 106) for meeting its problems. Three elements are involved: identification of the pollution problem, an assessment of priorities, and determination of priorities for issuing discharge permits and awarding construction grants. The strategy developed should be based on sound water quality planning rather than simply on an existent annual state program. The basic plan made under the provisions of Section 303 is the best platform for a state strategy.

Following these steps, the next element is submittal by the states of their actual programs. Each state will receive a base-level grant for maintaining on-going overhead to conduct the program. Since the program should be expanded to meet increased state responsibilities, EPA intends to allocate additional funds for operating the permit program, the planning processes, and the expanded construction grant program, particularly engineer's plan and specification review.

Grants for state programs (Section 106) are doubled ($20 to $40 million) from fiscal 1973 to fiscal 1974. This reflects EPA's awareness of the importance of the state's role. That role has greatly increased. For example, adequate reporting and evaluation requires a state to submit a semiannual report on program achievement and milestones and an annual report on pollutant reductions and water quality improvement.

A vital part of the planning process is the continuing needs assessments on which construction grant allocations will be made. These assessments will be based largely on the Section 303 basin plans.

The permit system is closely related to these basin plans. Discharge permits issued in areas having severe water quality problems will be based on water quality standards and will contain an assessment of water quality and the pollutant discharge load that will allow the standards to be met.

The basin plans will also include an assessment of non-point source pollution problems. A program including estimated costs will be required.

The next level of planning is areawide. The Section 208 areawide plan is where local problems and their solutions will be defined. The major principle here is to gear planning to the level and complexity of local decisions to be made.

Governors are to define areas for such areawide planning on the basis of three elemental criteria: that it be the locus of a water quality limited segment where secondary treatment or the best practical control technology will not solve the problem, and that local cooperation has been demonstrated such that the program can be carried out.

Comments — Questions and Answers

We are on the threshold of change in water quality management; this change involves both problems and opportunities. New ideas or different approaches must be applied to our concept of a community. This will affect what we think of as home rule. With increasing portions of water pollution control funds coming from nonlocal sources, one must expect requirements that must be met; this promotes regional solutions to planning and management.

The concept of what constitutes adequate water quality management and planning is being redefined and broadened. This involves not only geographic scope but also non-point sources of pollution and goes beyond the more traditional concern with municipal and industrial wastes.

The questions of how to accomplish areawide planning and how to involve other factors such as land use and transportation is a matter to be solved by the states and their political subdivisions, who will have to make the necessary decisions through their political processes.

California, given sufficient manpower and funding, can comply with the administrative and planning objectives. It is encouraging to see the priority system to determine what will be done first if money and manpower are not adequate to do the complete job.

Only about 20 percent of the discharges in California are subject to any EPA permit; the remainder primarily involve discharge to groundwater. We are concerned about some of our groundwater basins, so we will have to seek EPA planning money to attack this problem; we cannot focus our attention solely on discharges to navigable water.

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Further, because we lean heavily toward wastewater reclamation, we must have some variation from what is done elsewhere in establishing state priorities.

Local agencies and industry will have a difficult time in meeting the planning deadlines imposed. In the continuing planning process, a provision for feedback on adverse factors and experiences is needed; modification of strategies should be allowed as we go along.

A very positive aspect of planning, if some of the factors cited can be accommodated, is that firm plans and schedules will be established and municipalities and industry will know what is expected of them over a period of time. However, it is also necessary that the law and the implementing regulations become stable.

How do the regulations for Section 208 provide for establishing the intent of the local jurisdictions to follow through in the management?

The regulations are in general language. Basically, the intent at this time is that there would be some resolution adopted; for example, by members of a council of governments to follow through. Some indication of allegiance to and capability of cooperative action and coordinated management for the jurisdictional area should be made. One way EPA gets comments on these implementation concerns into the process is through a regulations task force with representatives of regional offices, state water pollution control directors, and interest groups such as are assembled here.

Does a grant applicant now a part of a metropolitan region with a certified plan have to requalify under Section 208 before a construction grant offer can be made?

If a given existing metropolitan regional plan involves an area selected as having a major pollution problem and if the region has a demonstrated record of regional cooperation, its plan may be accepted basically as is. If these conditions do not exist or if a new regional agency is designated by the state's governor, a new plan may be required.

Where does one obtain copies of the draft regulations: what is the status of funding for planning (all Sections including 209)? Has it been released?

Draft regulations are generally made available through the state water pollution control agencies.

The language under the old Section 3C is now incorporated in Section 102C. EPA does not intend to fund this section of the act, but to fund Sections 303, 201 and 208. Funds for basin planning will come under Section 106 state program grants. Funding for 208 will be made available in FY 74. The Section 209 requirement for level B basin plans and reports was placed on the Water Resources Council.

Is there a possibility that federal criteria would advance more rapidly than state criteria, and federal enforcement advance more rapidly than state enforcement, thereby making the federal government the main enforcement agency locally?

One of the major purposes of the Water Pollution Control Act is to place responsibility for water quality control at the state and local levels. EPA's intent for enforcement, primarily in the permits area, is to have this program responsibility delegated to the states as fast as possible.

How do you see the Council of Government's (COG) role in the planning and management related to the act?

In any area in which there is a regional or areawide planning agency, it would certainly act as coordinator of the various types of planning, including of course, the wastewater quality control planning.

There is a real concern over the flow of paperwork within the EPA regional office. Some offices, in the approval processes, have some dependence on the action of other offices; however, this inability to expedite paper processing can and has worked to the disadvantage of the applicant. In some cases, the economics of the project are affected by the seasonal fluctuations of labor, material costs, and weather contingencies.

This is a problem which EPA has tried to address and is addressing. Actions are being taken to relieve the time restraints; however, it should be noted that in the past several years there has been some very significant national legislation passed including the Environmental Policy Act, which has added to the lead time necessary

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to get projects started. Proper planning and good communications among the offices involved should reduce this lead time. Emphasis is on the pre-application conferences among grant applicants, state interests, and EPA regional offices. Another improvement has been the relationship of the areawide planning organization, such as the COG's, in coordinating and resolving local questions before they get to state and EPA levels.

Where can we get copies of the "Water Strategy" paper sent to governors?

This is new, but ask the regional office.

In the past, most of the planning has been oriented toward the municipal area because of the impact of construction grants and qualifying for them. How would new planning requirements affect other than municipalities; for example, what is the role and responsibility of the industrial sector; what are the inputs that may be expected by either the areawide agencies, the state agencies, or the federal agencies; and what effects will the plans have once adopted and implementation is begun?

The 303 basin plans will contain the discharge information and also the target abatement dates for all discharges whether they be municipal or industrial and hopefully, as we know more about it, non-point source discharges. Therefore, the specific effluent limitations and requirements for municipal and industrial discharges will be derived from and contained within the permits. The plans that will be basin and geographically oriented will pull this information together such that we can (1) spell out priorities, (2) insure that there is consistency in limitations on municipal and industrial discharges, and (3) have a basis for tracking progress in abating municipal and industrial discharges. The best alternative for industry waste treatment, whether hooking up to municipal systems or discharging independently should be contained in an areawide plan. The non-point source discharge is one we consider extremely important and one we do not know much about, and it is our hope that through the planning process we will discover more about non-point source causes of pollution and control for non-point source problems.

What is the relationship between the planning that will be conducted at the state level versus the planning that will be expected at the local level?

Essentially, the basin management plan will be performed by the states. The local level will prepare the areawide plans. Whether planning is done at the state level or the areawide local level is a determination to be made by the governor. He is to designate Section 208 areas. The state can subcontract as the planning agency for 208 authorities. There is an important distinction between the state acting as a planning agency and the state becoming the planning agency. For designated areas, there is a lot of concern over EPA's relationship with the 208 authorities, such as whether or not the contract instruments are agreed directly between EPA and the local area or whether they go through the states. The EPA intends to handle the Section 208 contract power in the same manner that it would handle the contract powers for Title II funds for construction grants, that is, dealing with local communities through the states.

It was said that the final planning process must be completed by June 30 if a community is to be eligible for construction grants. Where does that place municipalities and industries who are on an implementation schedule for compliance, say by 1974 if they come in and the plan is not complete because the funds are not available to complete the plan?

There are two parts to the question: (1) funding for a construction grant for a municipal facility and (2) how planning requirements relate to construction grant applications. Concerning the first part, the areawide planning program, particularly under Section 201, is not a departure from what EPA has been doing in the past under 18CFR Section 4. The final date for completion of areawide plans was June 30, 1973. Many states have proceeded under that date and will achieve it. The EPA recognizes difficulties states are encountering and is attempting to alleviate planning requirements for applications by specifically tailoring the level of planning to the minimum information required to make program management decisions. For larger and more complex areas, that planning pressure cannot be alleviated. The cost-effectiveness considerations are extremely important. Not only are priorities set when there are budget constraints, but a least-cost solution to get the job done is also established. Therefore, EPA wants the planning done. Also, there will be additional funds available for planning by using the first step of construction grants for this purpose. This will enable planning to be done

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where heretofore there have been financial bottlenecks. In establishing guidelines for the states to structure their priority lists, four general criteria were set up:

1. Water quality and pollution problems in a state,
2. The need for preserving existing high-quality water,
3. Emphasis on highly populated, pollution plagued areas where the grant will have the largest impact, and
4. Other factors that the states believe are important in determining priorities.

There might be some states where there will be resource constraints. This will have to be recognized and accepted.

Through the 303-106 process, the states and EPA will have to set the priorities and adhere to them with regard to the construction grants program and the NPDES (permit) program.

Explain how states and communities are to know what level of planning will be required by the EPA.

In the regulations now being prepared by EPA on the 201 planning program, there is a section on level of complexity and level of planning. In the SMSA's, a much more extensive level of planning is needed to meet the basic guidelines contained in the regulations. Ultimately, of course, common sense will tell what planning is needed. In its regulations and requirements EPA points out what it considers important and what factors should be examined. Where there are cost-effective solutions, EPA wants these to be considered. The regulations are structured so that different levels of planning will be required for different problems. The regulations in the past have not been that flexible.

Will EPA or the state determine priority for construction?

It is clear that the state is the responsible agency, but, needless to say, EPA would like to work with the states in assuring that we get these problem areas defined.

Give some examples of agencies that can be designated as responsible for areawide management (assuming that this question applies to 208).

First, the intent of this section is for planning to be focused on urban, industrial SMSA's. Hence, criteria emphasize these areas. Second, criteria focus on significant water control problems. If a problem can be solved by a simple facility plan, more extensive planning need not be done there. Section 208 areas will be limited to those areas where secondary treatment or best practical control technologies will not meet objectives. Third, 208 plans are only the first step of a process. The next step is the action implementation of the plans. A specific requirement is that all jurisdictions within the area abide by and conform to the plan. It would be unwise to adopt 208 plans where there will be an appreciable amount of local conflict and where communities and jurisdictions will not be willing to go along with a plan.

Regarding the makeup of these planning agencies, one of the major issues is whether the planning board members should be all elected officials or whether there should be some appointed officials on the board. Currently, it is EPA's position that there must be elected officials on the board, but they do not necessarily have to constitute a majority. The EPA allows the governor to designate either general purpose or special purpose planning agencies.

Proposed 40 CFR 130 (303) seems to go beyond planning inasmuch as it would require an immediate state certification of the existence of the power to implement plans and a commitment to do so. Comment?

The law requires that a state authorized to have a permit program must have a continuing planning process. Past history shows a need for this. If we are to meet existing time schedules, EPA must have the information that the Section 303 regulations require. State strategies will be a prerequisite for a 106 program grant.

What information and promulgations required of EPA are in the Federal Register and what is not?

Basically, the Register contains 303 regulations that are to be effective soon; the Title II regulations published February 28, 1973, and the 402 regulations that cover the federal permit program published in proposed form January 11. The EPA does have a list of regulations and required actions and the regional offices are informed weekly on their status.

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If stream analyses sufficiently broad enough to cover most discharges are not performed, how can the decision concerning water quality limits and effluent limits be made?

Math model techniques—some good, some not quite so good—are available. Probably everyone wants guidance from EPA on this. The basin planning process (303E) is one of the essential elements to be accomplished. Marshaling available data with resources to gather it where it is unavailable is a monumental task. We must establish priorities to determine a starting point. There is some historical information to document the fact that some stream segments and water bodies are water-quality-limited. Section 303 planning provides guidance but not necessarily the answers.

What efforts is EPA putting forth in the modeling area?

EPA does not have sufficient resources or manpower to do load analyses everywhere and wants states to do these where useful. Where modeling is necessary, it will be done. There has been a tendency to be more concerned with the model than the decisions to be made.

Is the deadline July 1, 1975, for completion of the plans under 303 required by the law and if not why was this date selected?

It is not required by the law. It was administratively determined through discussion with the states. States ability to meet that date is not uniform. Those that had an ongoing program felt they could meet the objective by the end of this year. Other states felt they could not meet the 1975 date. However, EPA feels states must have 303 plans by that date to achieve the 1977-78 goals.

May a state participate in planning without using the permit route?

The state has to participate in the permit program if it goes the planning route and all states will be required to do 303 planning.

What exactly is needed by EPA to be certified by 1974? Are the MR plans still required? Or is the needs assessment the required document?

The 303 process with the 106 plan (old state plan) backing it up will be required before EPA can continue program grants to the states. In the 106 document, there will be a needs assessment—an inventory asked of the states.

If EPA does not recommend the 208 plan where local support is fragmented, what is recommended to achieve regionalization?

The state could use the 201 area of Title II.

Assuming there are several agencies to perform functions that are not under one governmental authority, what criteria will be administratively utilized to determine the authority of the agency to coordinate all the functions? (This seems to refer to 208.)

The gist of the question is the intra-agency and the multiple-local-agency review function. Covering all intra-agency review requirements is a real problem in the areawide plans. The last count showed 17 possible federal programs that involved local planning. Several have recently been eliminated. The EPA will attempt to develop intra-agency agreements at the federal level; at the local level there is the clearinghouse review, and that mechanism must be relied on extensively.

State regulatory agencies have many people under orders and court orders. All are trying to move ahead with abatement programs. Are planning requirements to stand in the way of rapid implementation or grants? What does EPA think will be done to resolve this in favor of moving ahead with actual construction where there is lack of planning documentation?

The EPA is not concerned with planning documents. It is concerned with planning developed information and analysis. A meaningful give-and-take situation between an EPA region and a state would occur if a state or

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local community should present an analysis showing that a certain procedure is the most cost-effective way of approaching the objective, although they may not have written or published their procedure. The EPA needs the information. Lack of formal presentation will not hold up the program. The 303 basin plan is to gather together all data available from whatever source to see if there is anything to indicate how best to get the program moving. This technique permitted EPA to construct 55 basin plans covering 60 percent of the population and 50 percent of the major industrial discharges in the country at a cost of two-man months per plan.

In administering the act, what cognizance will be taken of the considerable ecological difference from region to region that creates differences in the land, water, waste assimilation capacities, and land-water benefits and detriments in the disposal of wastewater?

The act does provide certain national criteria. In writing guidelines for the Section 303 basin plan, alternative methods of waste disposal, for example, on land, are prescribed for investigation, and they must be explicitly reflected in a state's assessment of its pollution problem in its overall strategy. Implementation strategy can be modified and legislative changes can be requested if necessary.

Discuss the present status of limitations in critical areas. For how many years shall we plan? Does it not make more sense to regulate water input instead of wastewater output?

The purpose is not to limit growth in areas with severe pollution problems. The objective is to spread the available grant money as far as possible by reducing the investment made in future capacity.

The greatest deterrent to effective wastewater management is the large number of government agencies involved. What steps are being taken to simplify this problem?

There is a very big need for coordination. California expects to run the permit program and the other measures of the act that are delegated to the states. Various memoranda of understanding are being drafted by EPA relative to working with other federal planning programs.

Will cities be allowed to ignore deadlines in their compliances because of insufficient federal grant money?

The EPA testified to the Congress that even with sufficient funds it will be difficult for all communities to meet the 1977 deadlines. We are looking at different alternatives to possibly accelerate compliance and set priorities that will encourage larger and more difficult projects. One alternative is to phase project stages. However, at some point we are going to have to face the legal issue of a municipality not meeting a compliance date.

Is it conceivable that discharges to navigable waters will ever be stopped?

It is a long range objective. The cost curve for it might be astronomical. The EPA approach to zero discharge is to identify what level of control is cost effective and produces an environmental enhancement. Zero discharge for the sake of zero discharge with no environmental improvement is a needless waste of public and private money.

Will construction grant funds be made available for local areawide planning now in preparation?

The availability of such funds is now being reviewed by EPA. One of the basic steps a state will have to take is to identify the priorities for plant construction and to determine the level and extent they wish to use allocated construction grant funds for areawide plans.

Is the timetable for Sections 106 and 208 planning a guideline, and what are the consequences to local entities if the state fails to meet the schedule?

It is a guideline. However, if EPA does not follow a schedule we will not be able to effectively process the Section 106 state program grants. This also will effect the development of priority lists for permits and construction grants.

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Does the federal government intend to get involved in guidelines for public hearings?

Section 101 specifies that the federal government, in conjunction with the states, will develop guidelines for public participation in the development of any program. Regulations have been written and published as proposed regulations in the *Federal Register*. That was February 23rd.

Will a governor be permitted to designate sanitary districts or multicity cooperatives as areawide planning agencies, or are councils of governments going to be imposed on us?

The state is the management agency for the state program. The governor is to designate the area management agency. The EPA will prescribe criteria that a governor can employ in designating the planning agency and the implementation agency. There is a requirement that elected officials representing local government be responsible for the planning process.

What federal funds are available for the various planning provisions?

Section 106—$40 million, with certain portions earmarked for Section 303 basin plans; Section 208—$25 million; Section 201 funds are dependent on the states and the amount of money they apportion from their construction grant allocation. The funds cited are for fiscal year 1974 beginning next July 1.

Will industries discharging to municipal systems be allowed to ignore deadlines when the municipality serving them is not in compliance?

EPA is reviewing how to phase the earlier deadlines for pretreatment compliance with the 1977-78 requirements for municipal plants.

If the governor determines, under Section 208, not to designate any regional problem areas, will 208 planning money be available directly to the state so that it may conduct the planning under this action? Under 208, is the management plan to be formulated by a regional planning agency, local community or state?

Generally, the feeling in EPA now is that 208 planning money would not be available but that states would have to use either 106 funds or any other. To the extent that some 201 planning money can be incorporated under Step 1, that money would also be made available.

On the second question, the basic management plan can be done by either a regional planning agency, by contract with a private firm, or by the state. However, it is a requirement that local elected representatives be the responsible officials for developing the plan.

Most of our water pollution problems have been "studied to death." Plans, studies, and master plans are available in abundance. When will funds be made available for the construction of facilities that have been needed for years? The EPA seems to be substituting and even delaying action with planning. Is this a planned attempt to pay lip service to a popular national issue without having to pay the price?

EPA recognizes that in many cases a good deal of planning has been done. To the extent that these plans are available then those particular construction grant funds should be available. EPA approved over $500,000,000 worth of projects on March 1, before the user requirements deadline. The user charge cost recovery that will be discussed this afternoon will affect the design considerations in many plants where there is a significant industrial component. Industry will get into a trade-off situation where they will take the least-cost method. Therefore, there may have to be some replanning.

How would you suggest that a state obtain a commitment from a community that does not have a pollution problem and yet must be included in a regional plan upon insistence by EPA?

General feeling is that they would have to participate. EPA will not allow gerrymandering on the 208 areawide basis. If the local situation is such that there is some degree of widespread difficulty in this situation the governor or local officials should take that into consideration at the time of a 208 area designation.

Is federal money available for land purchase and family relocation costs as it relates to water pollution control

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facility development?

There is a provision that construction grant money under 208 can be used for land acquisition, but the land is that which is confined to the integral treatment process; that is, you cannot purchase the land under the administration building. However, if a land disposal system was integral to the treatment, that land could be covered by the grant. Family relocation costs are not believed eligible costs as far as federal assistance is concerned. Money for this is apparently available under another law.

If project plan and design for an urban/industrial problem area is completed before 1975 is it then exempt from further requirements?

If this project is in a 208 area, legislation provides that an initial plan be submitted about 2 years after establishing the planning process and then subsequently at such time as is practicable to upgrade and update the plan to reflect the dynamics of the existing situation. Law permits continuing the planning in the 208 area. If there is a 201 plan for urban complex areas and it is submitted by 1975 that would be satisfactory for purposes of getting construction started under that plan.

On the basis of what formula will the Section 106 planning funds be allocated?

Under 106, 50 percent of the funds to an individual state would go to general purpose state programs, the remaining 50 percent would be divided. EPA has not yet set up the latter distribution but present thinking is 7.5 percent for a permit program, 7.5 percent for a monitoring program, and 15 percent for a planning program and other additional incurments. Formulation of the allocation of the discretionary program funds has not been finalized.

How were the target years of 1977, 1983 and 1985 established? Were they engineering decisions or legal decisions?

Enactment of P.L. 92-500 was delayed about 2 years. These dates were established by the Congress on the basis that they were so pleased with the deadlines they had established for the Clean Air Act, with regard to mobile sources, that they felt establishing target dates for the states was the way in which to accomplish the work required.

How much money is required to fund the administration of EPA annually?

EPA's operating budget exclusive of construction grants is about $440,000,000, of which approximately $100,000,000 goes to state agency assistance. Therefore, $340,000,000 remains for EPA air and water programs, divided among enforcement programs, research programs, and operational programs such as monitoring, permit programs, and general overhead.

In developing these water pollution regulations who provides the input, engineers or lawyers?

This answer depends somewhat on the nature of the regulation. In the secondary treatment most of the input was provided by engineers, who are still arguing as to what secondary treatment is. EPA still does not have a definition. Some of the regulations had a good deal of legal impact. General counsel impact on working groups is being included in the regulatory language required in the regulations, but it is generally the programmatic people who are putting the regulations together.

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CONSTRUCTION GRANTS

CONSTRUCTION GRANTS (TITLE II)

Regulations for administering the grant program have been published in the *Federal Register* (See Appendix). The regulations contain a step-by-step guide for applying for a grant, a description of how an application will be processed, and an explanation of how payments will be made. Grants may be made in three separate stages: Step 1, for preliminary plans and feasibility studies; Step 2, for construction drawings and specifications; and Step 3, for actual construction. This procedure will allow distribution of state allotted funds to projects ready to use them and will allow more prompt payments to municipalities.

Federal funds will be allotted to the states based on assessed needs for pollution control rather than on population as in the past. A new needs survey is required to make the fiscal 1975 allotments; it is underway and is expected to be completed in the summer of 1973.

The act provides for a new method of assessing charges for wastewater treatment. Users will be required to pay their fair share of operation and maintenance costs and industry will be required further to repay its proportionate share of the federally assisted capital cost. Discharge permits will include a description of significant industrial wastewater discharges into a public system in terms of quality and quantity.

No grant may be made after July 1, 1973, unless the applicant can show that the wastewater sewer system contributory to the treatment plant is not subject to excessive infiltration. Federal assistance is also available for new collection sewers under certain conditions. However, in the absence of full funding, the emphasis will have to be on treatment plant construction.

The proposed definition of secondary treatment specifies a BOD and SS discharge not to exceed 30 mg/l on a maximum monthly average and 45 mg/l on a maximum weekly average. It is not possible to establish a uniform national standard for other pollutants because of the variability in reductions; these will be set on a case-by-case basis. Also, for a publicly owned treatment plant receiving substantial portions of a high BOD waste, provision will be made for adjusting the secondary treatment definition. Conversely, for dilute wastewater the percentage criterion will be applied.

Water-quality-related effluent limitations pursuant to Sections 302 and 307 for toxic substances will be applicable when the provisions of the secondary treatment definitions are not sufficient to prevent toxic discharges.

Plants that reliably and historically exceed the 85 percent removals will be permitted and enforced at the higher level.

Reclamation is now fully recognized, but these projects will be caught in the same situation as collection systems with respect to funding priorities going to treatment facilities. In addition, more research has to be done on reclaiming wastes for reuse.

The new needs survey requires across-the-board cooperation if it is to be completed by June 1. In Region IX, EPA intends to list everything from septic tanks on up.

Region IX is working with California in an early review of proposed grants. Reviews are being made and conferences are being held before state certification of the project. This is being done to expedite the grant award process with the goal of making an award within 30 days after certification.

One of the good points of flexibility in the new provisions is that of staging or phasing projects.

California, in October 1972, had projects on its top priority list having an estimated cost of $669 million; the federal allotment for the state is $261 million. Local agencies were told to either stage their project schedules or have the state do it for them.

By the end of fiscal 1974, California will have an accumulated deficit of some $1.25 billion caused by a lack of full federal funding as authorized. Federal funds, under the present allocations, are not adequate and the situation is made worse when we consider the newly eligible activities under the new law.

The state is already taking steps to provide matching state funds for all federal monies available. The EPA should plan to release funds in such a way that staged projects could proceed during the next several fiscal years. In this way, local agencies and their bond counsels would feel more at ease in going ahead with the first stage of a staged project.

Comments—Questions and Answers

The matter of staging may be interpreted somewhat differently than has been stated here. Normally, it means separate construction contracts, and this can create problems in properly treating wastewater. What is needed is a phasing of the paper work.

Cooperation among EPA, the states, and local agencies seems to be at an all time high.

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Precertification conferences, as previously described, are very helpful in speeding up the grant award process and in working out differences before design and construction.

Because all local agencies have come to expect federal funds, continuity of program has become very important. Communities must know what assistance they are going to get and when they will receive it. Staging of projects can help in this regard. This can help firm up the cash flow picture and permit localities to know when and to what degree they must call on their taxpayers.

Another important area of concern is that of the vast amount of paperwork that is required now. It must be reduced and the procedures streamlined.

Designers particularly need to have established an even flow of engineering and construction. This would result in reduced engineering costs by eliminating the presently experienced peaks and valleys of work volume.

The EPA is attempting to reduce some of the multiplicity of reviews now required and thereby reduce the paperwork.

It is necessary that these new provisions be administered as a national program so that we may have program scheduling and a structured flow of projects, obligations, and outlay on a national basis. The construction grant program is the largest single public works program in the U.S. today and it must be operated as such.

Will there be any consideration of relaxing treatment requirements rather than staging construction in order to adapt to reduced funding?

No.

A county wastewater treatment plant is accepting sanitary wastes from a food processor but has not accepted the process wastes. These wastes are nontoxic and biodegradable and would represent about 2 percent of the treatment plant's load. The county is planning a plant expansion. Will it be eligible for a federal grant? What can the food processor do to get the process wastes accepted for treatment?

The county would be eligible for a federal grant. Pretreatment would not seem necessary for the food processor's waste, but EPA has no authority to require that the county accept the waste.

What are the prospects in California for priority funding for a combined overflow?

Presently, such a project would be at the second level of priority. However, this is true of several of the new categories of eligible projects under the new law.

Have guidelines been published for the required user charges?

No. However, the law requires that no grants be made after March 1, 1973, unless a municipality has adopted or will adopt user charges. Guidelines are expected to be released by about the middle of March.

Do user charges apply to all system users, domestic and industrial?

Yes.

In staging a project, can construction be in steps or increments that are, in themselves, not usable, or must a usable portion of a plant be constructed in each stage?

There have been various approaches to stretching available funds—stage funding, step funding, step processing, step grants, step projects, and split projects. We are not going to build several foundations around the country. The program will not be relaxed to the point where a state can take its allocation and spend a very small amount of money on a large number of projects and then ask for more federal money.

Will a state's present priority system for project funding apply to 1972-73 projects?

In preparing the regulations for the new construction grant program, EPA has attempted to make the transition from existing procedures to the new as easy as possible. A state may use its existing method, it may revise its method, or it may proceed with the Section 303 planning process right away.

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Will general fund taxes suffice for a user bearing his fair share of operation and maintenance costs?

General taxation or property taxation as a substitute for user charges is not generally acceptable. However, if it can be demonstrated for the particular treatment works that such a system results in a reasonable degree of proportionality to users, then it would be considered for approval.

Is it contrary to the intent of the new law if an industry finds it more economical to treat its own wastes instead of becoming involved in a user charge and paying back a share of capital costs?

An industry must make its own determination based on its internal economics. Because an industry would have to treat its own wastes to the level of best practicable treatment as established for the particular industry, economics are likely to lead to using joint treatment; it is not mandatory, however.

Will grant funds be available to offset potentially expensive contractual arrangements for capacity rights in a regional system?

Such costs have not been considered eligible in California. Joint powers arrangements must all be made and signed before a grant application certification for funding.

Are federal grant funds available for infiltration monitoring equipment, and what level funding will be offered for these studies?

Eligible costs for infiltration studies may be aided at 75 percent. Sewer system evaluation normally will be completed as a part of the preliminary plans and studies. Reasonable force account and equipment purchases or rental costs will be allowed if the regional administrator has given prior approval for the use of such forces or equipment. Detailed guidelines for these studies are being developed.

Can funds allocated for stage construction be accumulated over a period of years to allow construction to take place in one step?

No. The objective is to get as much benefit as possible from available funds and following the state's priority determinations.

By what date must a grant applicant have an acceptable sewer use ordinance and a user charge system?

The ordinance is required to be enacted and enforced before the end of construction funded by a federal grant. No grant may be made after March 1, 1973, unless the applicant has adopted or will adopt an adequate system of user charges.

Will EPA give priority to funding collection systems in rural and unsewered areas with treatment needs?

Priorities are established by the states and not by EPA. Most states will probably view this situation in terms of all the needs.

Will EPA accelerate construction grant payments to a monthly basis?

Grant payments may be made in at least three steps—preliminary plans and studies, preparation of construction drawings and specifications, and actual construction. A detailed payment schedule will be negotiated for each grant.

What are the priorities for issuing construction grants?

The state plays the dominant role in setting the priorities. Until July 1, 1973, the state can use their present list and present priority system. After that date, which coincides with the state submissions for 1974, the priorities could be the same or could be a new system. It is expected that in most states it will be new to include a way of coming to grips with the new eligibility items. Presumably, each state will have a new priority system that will have to be approved by the regional administrator. Because of the shortage of funds it is expected that the states will look harder at treatment or interceptors to abate a pollution situation.

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The community's share of planning and engineering: does it have to be matched and paid concurrent with EPA payments? (1) Report (2) Plans and specifications (3) Construction

Presuming the question refers to Steps 1, 2 and 3; the grantee must agree to pay or have funds available for the local 25 percent share of the estimated cost for each grant. Therefore, based on schedule of payments to be worked out with the EPA, the local entity would have to meet its bills pending receipt of these payments.

In current projects evaluations is the percentage of each grant offer negotiable, or will all grant offers be at the 75 percent level?

Grants must be at 75 percent level of an estimated cost.

How many project applications are on hand and pending decision in Region VIII?

There are approximately a dozen applications for FY 1973 funds that have been certified by the states. The present status is that, although regulations are on hand, the region is awaiting further guidelines before they proceed.

Are guidelines available for acceptable user charges at the present time?

Yes, they are out in draft form for review and can be made available at the regional office

When will state offices get guidelines, etc., on Section 206 relating to reimbursements?

EPA is expecting these to come out shortly. States will of course get copies of these and they will be published in the *Federal Register.*

Can private industries apply for a grant for pretreatment facilities from EPA?

No. Grants are made only to public entities.

Could funds be made available under the act for municipalities discharging wastewater into an industrial waste system?

No, because in order to receive a grant they must have jurisdiction over disposal of wastes or agreement with another entity for disposal.

Have allocations of 1973-74 funds in Colorado been based on application or designation?

All have been based on applications.

Will it be possible to have revenue sharing funds simultaneously with EPA funds?

EPA believes that revenue sharing funds cannot be used for the grantee's share of a matching grant.

With respect to user charges, is the equitability of user charges to be determined on the basis of a single agency serving a particular area or are the user charges to be determined equitably over an entire area of a water pollution problem or concern?

Charges would be based on cost to each separate entity, not a blanket charge. Each would have to develop its own user charges. Costs such as capital, amortization, and O & M vary with each entity.

Would the step grant process require separate applications and be subject to A95 clearance?

Yes, but material submitted in one application, such as civil rights, would not have to be resubmitted with subsequent applications.

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What is industry expected to contribute to a project as far as a replacement fund is concerned? Is it based on a matching situation, or the total cost of project; and what percent is industry expected to contribute?

Replacement refers to replacement or the costs for equipment as it wears out. The costs will be included in normal user charges for O & M.

Considering that there are 3 stages—planning, specifications and construction—can technical services be picked up at a later date?

Cost of technical services can be picked up under Steps 1 or 2 or can become payable at Step 3, that is, where a grant agreement is entered into for construction. This means that the consultant or community has to finance total cost of plans and specifications until the grant agreement.

Although industry must pay its pro rata share of the 75 percent federal grant to a municipality, can the municipality require or waive participation in the 25 percent cost to it of its share?

Yes, that is the understanding of EPA.

How is land acquisition eligible?

Land that is used as an integral part of treatment, such as a spray irrigation, where the land is used to achieve the necessary degree of removal would be eligible, but land for rights-of-way for sewers or the treatment plant itself is not considered eligible. EPA does not want to get into the real estate business. This is a local matter. With regard to sludge disposal, where land is used for tilling as the ultimate source of disposal, this is still under consideration.

Are OSHA regulations to be considered for EPA construction grants for state and municipal projects?

Federal law requires following OSHA regulations on all construction projects. These must be included as part of the specifications.

What means of financing, if any, are available under the grant program for privately owned facilities on federal lands?

Grants are made only to municipalities. Grants are not made to other federal agencies. EPA would not make grants to private developers.

For design and construction to be eligible under one contract, is this a part of the law or an EPA regulation?

This is an EPA regulation to allow the option of a design/construct contract. Basically, of course, this would apply to major projects where concurrent design and construction would lead to quicker on-line operation than the design and bid procedure. Of course this is subject to state laws and local ordinances because it is public works.

How is cost-effectiveness defined when delays to application processing, planning requirements, and NEPA requirements are considered?

This gets back to earlier discussion of assistance in the pre-application stage. Depending on how adequate the application is and how complete the planning is, there is no delay and no problem. With regard to NEPA requirements, if a good in-depth assessment has been prepared to permit EPA to make the decision, delays should be cut back considerably; perhaps approval will be forthcoming in 90 days.

What does the definition of secondary treatment have to do with states' effluent standards, especially in Colorado?

The law now requires states to provide intrastate standards. Colorado's standards are jointly approved by the government. The EPA will have discussions with a state when it feels the state effluent standards are not as high

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as EPA thinks they should be. Also, under the municipal permit system there will be an effluent prescription written along with staging of construction to meet the standards. The EPA is aiming toward compliance with secondary treatment by 1977.

Does the design/construct concept conflict with the earlier "turnkey" concept?

Hearings were held on the "turnkey" concept at a number of locations throughout the country, and testimony was evaluated. Regulations as now published are subject to comment until April 30, 1973. These are interim regulations that will be amended from time to time.

Is there a chance that FY 1974 allocation to states will be revised by EPA administrators or by congressional action?

One cannot predict what action Congress will take. There are certain actions proposed for taking another look at the formula, but as to the method of allocation there does not seem to be any discretionary leeway for the EPA administrator to take any action on it.

Will EPA require state allocation of FY 1974 federal funds to meet specific priorities procedures?

A needs survey would cover all eligible items under the act, but the total cost for collection systems or combined stormwater systems will be tremendous, and resources required will never be available. Concentration will be on the more critical areas.

Does the applicant have to submit an operation manual before approval of a grant? If so, what step must this manual include?

The manual is a working manual. It conceivably should be available before construction is completed but not necessarily along with plans and specifications. The major areas to be addressed by the manual are the design concepts, the very important item of recommended staffing, maintenance items, and so on. It should be a working tool and be available to the operators and at start-up to shake out problems to which the manual does not address itself. The manual is, of course, an eligible item under the grant and should come under the classification of Technical Services.

Are there any provisions or guidelines in the Act to promote mandatory certification of waste treatment process personnel who are in responsible charge of facilities?

This is considered a state matter, although EPA would like to see mandatory requirements set up by the states.

When will the guidelines for reimbursement payments be available?

That will take several months. Guidelines will probably be available for comment before that. Do not look for windfall grants to be part of initial allocation at least.

Some comments were made during the session on zero discharge. Comments?

One of the requirements of the present act is that the goal for all industrial discharges is zero discharge by 1985. The original Senate Bill, S. 2770, stated that by 1985 it is federal policy to achieve zero discharge. Policy has the force of law. The present act says that it is the federal goal by 1985 that we will have zero discharge. The word goal is significant. Goal does not have a legal impact and, therefore, not a legal requirement. It is not enforceable in court. The important thing is that we will achieve water quality standards.

Regarding Phase 1, 2, and 3 grants, can a planning grant be obtained before getting the interim plan dealing with whole degree of treatment and stream standards, because the purpose of the planning will be to set those standards?

As this planning applies to a particular project, it is possible to get a Step 1 grant that can be used to fund that type of planning and also preliminary studies. Hopefully, not too many communities will be coming in for the Step 1 grant. When a community applies for a Step 2 grant, it will be immediately eligible for costs incurred up

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to that time, so that payment can be made at that time. When a community comes in for a Step 3 grant, the costs incurred up to that time are immediately payable.

The new act has no provision for overruns funded under FY 1972 money. Is there any guidance for communities caught in that situation?

Legal opinion is that 1973-74 money cannot be mixed with prior year money. The EPA is trying to get a solution for this overrun problem. In some states where money is no longer obligated it might be used for such grant increases. However, it is a difficult situation that has not yet been resolved.

Can a municipality that has already received a grant but since that time has been required to go to a higher degree of treatment withdraw and make a new application, recognizing, however, that a town cannot withdraw simply to take advantage of the new 75 percent grant authority under the current law?

Yes, under the above situation, it can withdraw and the funds thus freed can be used to fund other projects.

In connection with the preliminary plans and final plans applications, how will grant be determined?

Grant for construction should be made as close as possible to the time that bids will be taken. Price escalation that can be expected because of inflation, and so on, can be worked out on a practical basis with regions. Documentation would be required to support the costs of preliminary plans and final plans.

What will be the magnitude of effort at the state level to manage the new program of grants in three steps?

As states revise their method of doing business under the new act, it will probably be 3 or 4 months before the impact is known.

Will EPA's definition of best practicable treatment address nutrient removal even in areas where it might not be a water quality consideration and, if so, should plants now being designed address that problem?

The EPA is still working on what best practicable treatment means. The EPA will try to get requirements out by mid-year, but differences can be factored in as the project progresses.

Has the definition of secondary treatment been determined?

There is a proposed regulation, (published April 30, 1973), that allows some flexibility. It would propose secondary treatment based on BOD, SS, fecal coliform bacteria, and pH. The units of measurement refer to monthly average and weekly average effluent concentrations for BOD and SS. For monthly averages, it would be 30, weekly averages 45; for fecal coliform bacteria 200 monthly, 400 weekly; and for pH a range of 6 to 9.

Is it the intent of EPA that cost recovery is best accomplished through utility rates rather than initial charges at the time of connection to the utility system?

The EPA will shortly issue guidelines on cost recovery systems and hopefully this kind of situation will be addressed.

In Kentucky, there is a lack of laws requiring communities to join together for area or regional planning. How can a project that will serve multiple communities be started? How do you divide cost?

This is a planning question. Knock a few heads together. Use single tree psychology.

If a municipality receives a Step 1 grant for completion of construction plans and proceeds to complete these plans, is the grant for Step 2 construction automatically reserved and assured to the municipality?

This is a scheduling problem for the state as to how it will plan the use of its funds.

How much money is actually available to pay off obligations incurred during FY 1973?

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The new act provides that funds could be obligated. However, for the actual payments to be made there had to be specific appropriation by the Congress, and the new budget does request $200 million to get those payments underway, but these funds must be appropriated before payments can be made on new Title II grants.

When you say industry must pay its proportionate share, exactly what do you mean? Traditionally, rate structures are based on a sliding scale, with decreasing unit cost with increased use. For example, the minimum sewer bill is at a rate of $0.48/100 cu ft. Above 7,000,000/cu ft/month, the rate is $0.12/cu ft. Are you saying that a proportionate share is a flat rate that will cover all O & M expenses, say on the order of $0.30/cu ft for all water discharged to the system?

The new guidelines that are being worked on will have a number of actual examples. That type of calculation will be included as an example.

Can low priority collection lines be processed through the state to EPA for general approval with the hope that they might be financed later when more EPA funds become available?

In the past, regional offices have made exceptions and have allowed applications into the system when there were no funds for them and have held them unduly long. Regional offices will have to establish a priority system for handling applications and also have some certainty of funding. However, if a community goes through with construction without a grant it will not get one later.

Are federal funds available to finance construction of tertiary treatment facilities where the effluent from the waste treatment facility will be used by electric utilities as a source of condenser coiling water?

Under Section 201, studies are being made with regard to recycling and what this means under the law.

Will three steps for construction grants require three separate grant applications or one continuing application?

It will have to be one continuing application to keep control of the project.

Reference Subpart E, Section 35.908 "Advanced Technology and Accelerated Construction Techniques." Is it the intent of this section, for example, to encourage demonstration of new techniques on a relatively small scale, followed by construction grant funding to implement technique on a full scale? Also, how serious are the EPA and state agencies regarding techniques allowing for accelerated construction when it appears that we are money-limited, not time-limited?

Section 908 was included specifically to indicate that some Title I grants for demonstration projects can be combined with actual construction. The Title II grants are limited to funding approved techniques so the experimental part would have to be funded by Title I and the improvement part by Title II. EPA will have to be more imaginative in the future in combining these two types of grants in order to improve the state-of-the-art.

In connection with the secondary limits previously referred to, is there an estimate of the design effluent limit or percent removal that would be required to meet the monthly average figures for BOD removal?

EPA has run some estimates to convert monthly averages based on plant operating records to yearly averages. In general in Region IV there is a ratio of about 1.5 between the monthly average and the yearly average so that when talking of yearly average one is talking somewhere in the vicinity of 20 and influent wastewater can be taken to determine reduction. Other than the 85 percent, these are monthly average figures not yearly average figures.

In the past, states would have to have their program plans approved before construction grants would be made. The new law makes a provision that funds are available for construction grants on January 1. Will the construction grants now be made before approval of state program plans?

Until June 30, 1973, we are essentially going with the 18CFR. However, after that whatever is in 303 regulations will have to be complied with.

CAPCO JEN 0005226

In past years, states had to submit their plans and no construction grant funds could be made available to the grant applicants before they were approved. Now the money is available on January 1, according to the law, which would be six months before start of a fiscal year. Will grants be made by EPA if a state program is not approved or, in fact, even submitted?

As long as plans meet the provision of the current regulations it will be covered if there is a reasonable reason for the delay. The answers relate back to 303 and ~~106~~ regulations and the interrelationships discussed in the earlier panel discussion.

1973 and 1974 funds are essentially available for grants, not for payment. Unless we reserve 25 percent for overruns and with the limited funds available this would be foolish and correction of pollution would be delayed. Would it be possible to continue 1975 funds with funds for 1973 and 1974?

No grants can be made at the present time until user charge regulations are out. While '73, '74 and '75 funds may be mixed, '75 funds cannot be obligated until the allotment is made. This is provided for in the legislation. The cities would have to take the risk that Congress would appropriate the '75 funds. The law requires grants to be 75 percent, therefore nothing can be done to dilute this percentage.

Have limits been set on infiltration allowances in new collection system construction? If not, will they be set? If so, are they available?

Excessive infiltration is defined in the regulations. The definition is not an easily understood one. There were plants built larger than perhaps necessary to handle these additional flows. There were also cases where bypasses were installed that were not really essential, if the infiltration problem could have been eliminated or reduced. On that basis, EPA can participate in infiltration studies and work and believe it valuable. How EPA approaches this is tied to definition of regulation. In a simple case of broken pipes, when a normal flow is 100 to 120 gpd per capita, an excessive amount would perhaps be 200 gpd. Somewhere in that range, flow is excessive and EPA would be alerted to the fact that something is wrong. EPA wants to see a cost analysis, what is the problem and comparison of alternatives. If it turns out to be cheaper to correct broken or leaky pipes then that would be considered excessive infiltration and EPA would expect that to be done rather than build a larger plant or a bypass. A separate set of guidelines is due out in a month or so and EPA will have a separate seminar on it.

How is "excessive" infiltration defined?

There are no specific limits on infiltration.

Please discuss the control of infiltration from private house connections. In this event, what commitments will be necessary to secure a Step 2 and Step 3 grant?

Infiltration from house connections is one of the problems. EPA wants an evaluation of such problems to see if it is feasible and economic to correct.

Would a town that had expended money in 1972 and 1973 to control infiltration before building a new treatment plant be reimbursed and to what extent?

If money was spent in 1972, before enactment of the new legislation, it is not eligible because it was not eligible under the old law. If money spent in 1973 (there is no longer any prefinancing so that if a project goes ahead on its own it cannot be reimbursed) an application for a grant must be made through the state and commitment for a grant must be had before proceeding with the project. However, if it is in 1973, there is a possibility that if it was put in as a part of the preliminary engineering report and then came in for design of plans and specifications EPA could participate in the preliminary work if it were eligible under the law.

Elaborate on the program Connecticut has for infiltration.

Basically it is an enforcement mechanism. The state has a legal requirement that a town do specific infiltration studies. For the most part, there is no money available for this.

CAPCO JEN 0005227

Why can't Connecticut solve its combined sewer problems by constructing holding tanks for combined flows that would be bled back into the major treatment facility when dry-weather flows return? Isn't this cheaper than sewer separation?

The problem is the same whether you separate or whether you collect and bleed back. The dollars are just not available now. In the meantime you piece-meal it and provide that all construction be on a separated basis and that towns undertake projects to separate. If dollars were available, it would be a viable alternative for our larger cities.

Combined wastewater overflow treatment facilities seem to be a "poor cousin" in the priority system. If we can demonstrate that separation of collection systems is the most economical from both first cost and annual cost, can we transfer priority to separation?

Yes; EPA wants an analysis of solutions. Solutions might be separation, conservation of leaks, detention tanks, overflow treatment facility, or a larger treatment plant. EPA wants an analysis to see what is the most cost-effective solution and then will pay for it.

We now have a cost recovery program under old law and plan to also construct future interceptors. Will we have only one cost recovery program formulated under the old law?

Region believes that if it is an interceptor the industry would have to pay its share of the cost of that interceptor and not the treatment plant if the plant was constructed under the old law.

Are redesign costs eligible for federal grant participation if an industry pulls out?

Yes.

What is the method of payments of the federal grant under the new 1972 amendments?

The major change is in the attempt to accelerate payments; any work done before the grant offer for reports or plans can be paid for immediately. From then on EPA can only pay for work as it is completed. However, EPA is no longer limited to the 25, 50, and 75 percent categories. An agreement can be made when the grant is accepted for a quicker method of payment such as 10 percent, 20 percent or whatever. There is flexibility in payments but advance payments cannot be made.

Will those communities with a grant offer before March 1 be governed by cost recovery and user charge guidelines that are now being promulgated or the old ones?

The old ones. That is why there was such acceleration.

What happens to those projects that didn't get funded before March 2, 1973, that have significant industrial impact? Is there any hope to get under old rules?

No. They will have to be under the new rules.

Should cost recovery systems take into consideration capital expenditures made in the past?

If there are still outstanding bonds and payments on interest charges are still being made, costs are being recovered either from general taxes or from sewer users. Whether or not that is an equitable allocation and whether or not it will be politically feasible to change from one system to another is a question that can only be answered at the local level, but certainly the alternatives should be explored.

Is there some feasible way to determine whether a small industry has sufficient "impact" on a plant to warrant a recovery charge being levied?

If it is an industry according to the definition of an industry then it has an impact, but it should be grouped together with all similar businesses that are classified as industries even though they are small, and a cost recovery system developed to recover appropriate costs from this group.

CAPCO JEN 0005228

How large must an industry be before a contract is required for industrial payback of the federal share?

This is a controversial question. It has been a problem even under the old regulations as to just where the cut-off point will be. Size is not mentioned in the regulations up to now and will have to be included. There has been no definition of size of industry. There has, however, been concern about sanitary discharges from a dry industry that nevertheless falls within the definition of an industrial user as that term is defined in the act. Current EPA thinking is that as long as the discharger is an industrial user, firm commitments are required regardless of size or nature of the discharge.

Will cost recovery (capital costs) be required for hotels, office buildings, apartment houses, etc., because they are also private profit facilities? If not, why are industries singled out?

No. Hotels, office-buildings, apartment houses, etc., are not covered. They are private, profit-making facilities. Congress made the judgment on industries. Under the user charges that cover the O & M everyone pays. The guidelines break those into four categories: residential, commercial, institutional, and industrial.

Does industrial payback also include the cost of interceptors and pumping stations as well as STP?

These costs are covered by the act that requires payback for the treatment works.

Does domestic wastewater issuing from industrial plants also require industrial payback?

Yes, because there is no distinction between the types of discharges coming from the industrial user.

Under the old cost recovery program: If STP was designed and constructed to accommodate industry and municipal wastes, who is responsible for financing the facility if the industry decides to treat its own waste?

The answer depends on whether the industry agreed in its commitment to the municipality whether or not it remained in the system. Under EPA guidelines, if its discharge represented 30 percent or more of the flow it would have committed itself and is, therefore, bound to meet its commitment. If not, it can pull out at any time.

What portion of industrial waste need not be considered in payback provisions such as sanitary wastewater and normal clean-up wastewater?

Under the law, there is no way of distinguishing between types of industrial discharges.

The law provides that construction grant money is reimbursable. Does that mean that a community or agency must obtain financing for a project's construction cost in order to award a contract and to meet payments during the project?

The approach under the new law is new in terms of giving EPA the authority to make contract commitments. The present scheme of construction grant funding is not new. The federal government makes a grant commitment and the funds are provided when a payment is due. We are attempting to solve the matter of step funding.

How will EPA interpret and implement contract authority?

The mechanics of the administration of the grants program is modeled after those used under the Federal Aid Highway Act. Each stage in the construction of a waste treatment facility is a separate project. Thus, the grant applicant furnishes plans, specifications, and estimates for each stage included in the term "construction" as defined in Section 212 of the act. Upon approval of these for any phase of a project, the U.S. is obligated to pay 75 percent of the costs of that phase, as work is completed.

Could you clarify the question of reimbursing earlier projects that went ahead without the full federal share of aid?

This money is to be allocated to the states in proportion to the owed balances.

CAPCO JEN 0005229

Does that mean that because a grantee has one year to apply for reimbursement that you will wait the year before making any allocation?

No. Each state will get a proportional allocation to cover the outstanding projects. We know what projects are entitled to these funds. If some eligible grantees do not apply the remaining funds will have to be reallocated.

On reimbursement, where states such as Wisconsin have been giving 25 percent toward wastewater treatment in addition to the 50 to 55 percent federal share, for a total of 75 percent, will the federal reimbursement bring this to 100 percent or reimburse the state for its 25 percent?

No. We are going to try to reimburse a state only for that portion of advance payment that represents what should have been the federal share. If a project received a full 55 percent federal share it will not receive additional funds.

Define the principal differences between the discredited "turnkey" and proposed design construct. Is design-construct in the Federal Register?

Yes, the regulation 35.920-3D is basically the same as the old proposal. Under the old proposal there was really no clarification and there is not in the new regulation. It is just an allowance. Assume guidelines or additional details will have to come out to explain how this will be utilized.

Would it be possible for a community with a number of marginal industries (for example, metal-plating or tanning) to build a municipal "pretreatment" center in order to keep the industries alive?

It really would not serve any purpose because under the new law industry would have to pay back the full share of their cost of the project. Pretreatment would be 100 percent industrial, and, therefore, the industry would pay 100 percent of the cost.

Is land for ultimate disposal of sludge (that is, landfill) eligible?

The regulation specifically states that landfill is not eligible but on the other hand the law and the regulations say that where land is used as part of the treatment processes or for ultimate disposal (or some such wording) it is eligible. It is apparently felt that a landfill, if it is used for disposal of rubbish, etc., would not be eligible. The present regulation is not clear and one having a question regarding it should raise it.

What is the basis for the establishment of a 15 mg/l BOD effluent quality?

The secondary treatment requirement was 85 percent removal and 30 mg/l because that was reasonably obtainable from existing secondary plants. The 15 figure is being proposed as a definition of best practicable because it can be done. There are activated sludge plants that can and do obtain 92 percent BOD removal and an effluent strength of 15 mg/l BOD or less.

What is the anticipated associated suspended solids level in the preceding requirements?

Same as the BOD.

Are these reasonable goals (BOD = 15 mg/l, SS=?) taking into account the variability of biological treatment on a day-in day-out basis?

The 85 and 30 figures are reasonable; the 92 and 15 are at present a speculation not having yet been determined. For new plants it is not unreasonable, but it will require a good design and a properly functioning plant.

When intermunicipal districts apply for construction grants, will funds for correction of collection systems be administered by the districts or by their constituent municipalities? If the latter, do you foresee a problem of coordinating construction of treatment systems with reconstruction of collection systems?

No. This is not excessively different from other projects. Administration could be accomplished either way. The

CAPCO JEN 0005230

grant is made to the construction agency if the district system builds the treatment plant that is the agency EPA deals with. They represent all the communities. If work is done within one of the communities, such as pumping station or interceptor from that community, it can be done either by the district if desired or by a separate grant offer to that municipality and EPA would do the same thing in this case.

Will "needs" survey include all municipalities or only larger ones, say greater than a population of 10,000 municipalities? Will the needs include stormwater separation and treatment, off-stream disposal, collection sewers, and best practical and best available treatment?

Region believes it will include all. Again, region has not seen a finalized draft of what will be included. The old survey was done for communities of 10,000 or more because of shortage of time. It will be done through the state agency. It will be up to states if they want to estimate or go to the smaller communities. Region recommends that if there is time that states go to every possible source to insure that nothing is left out. The survey will have to include an estimate of some way of estimating the items in the second part of the question. However, best practicable treatment at present refers to secondary treatment.

With HUD grants frozen and EPA's low priority for collection systems, could you suggest what avenues are left to a municipality other than financing itself?

State aid, revenue sharing, or do-it-yourself.

Define replacement. The word replacement appears in both the amendment and the regulations and is used in conjunction with user charges. Does this mean that it relates to out-of-pocket replacement costs for equipment as it wears out or does it mean annual payment to an annual sinking fund charge to provide for replacement of the facility at the end of its useful life?

It does not include the latter. The definition in the draft regulations for replacement is "those expenditures for obtaining and installing equipment, accessories or appurtenances during the useful life of the treatment works necessary to maintain the capacity and performance for which such works are designed or constructed." The sinking fund part of the question is clearly covered under the purposes for which the revenues from the industrial payback will be used.

What about industrial payback of the state portions? Will this be left up to the states or will EPA issue guidelines?

The clear intent of Congress is that the federal requirement for industrial payback include only repayment of the so-called federal share; however, Section 4B of the act has a saving provision that reads essentially as follows: "All regulations in effect immediately prior to date of enactment of this Act and pertaining to any requirements under the old Act shall continue in full force and effect." Concern is that this saving clause may be read as perserving old Section 601.34C that had to do with the equitable system of cost recovery with respect to the local share. The regulations published February 28 indicate that the drafters of the regulations intended that the old equitable system with respect to the nonfederal share requirement no longer prevails. There is, however, no federal requirement that a municipality itself require industrial users to pay some portion of the nonfederal share.

On reimbursements there is a difference between projects completed and funds committed. Will the reimbursement be on the basis of where funds have been committed or will the amount of eligibility for reimbursement be figures on the project that has been completed?

When a project has been completed we have a very definite dollar figure. Again, in speaking of reimbursements, we are talking about those projects that went ahead with less than full federal funding during the period of 1966-72. In the case where the project has been completed, EPA knows what the final dollar value is. In other cases, where the project is still under construction, EPA can only go by the presently known estimated cost and will make allocations accordingly, however, when final costs are known, if there are additional funds available, we will make further adjustments. If not, EPA will not be able to make further adjustments. There will be just so much money, some prices may go down and some may go up.

CAPCO JEN 0005231

What if all funding was from a local source and there was no federal or state funds available. Would you also be eligible?

Whoever advances the federal share of the funds will receive the reimbursement money; state, local entity, or combination.

Is sewer separation eligible for grant support?

Yes. All projects are subject to a state's setting of priorities and to an evaluation of "cost effectiveness."

How will industrial user charges be determined and what pretreatment will be required for industrial users of a municipal system?

Industrial user charges are going to have to be determined on an individual, project-by-project or plant-by-plant basis. They must cover operation, maintenance, replacement costs, and industrial capital costs on the industrial portion of the facility.

Under our previous regulations that went into effect a couple of years ago, industry was required to pay for pretreatment of its waste in order to make them compatible with the municipal system. This remains. Industry was required to pay its share of the operation and maintenance cost. The third element is really the one that represents a change. Under the old system the community was required to pay its share of the local cost. Let's say local cost was 20 percent in a case of a 55 percent federal grant. Under the new system the industry is required to pay its share of the federal share, which is 75 percent.

Industry may arrange to repay this over a period of time and this again will be negotiable on a project-by-project basis, but it will be interest free. EPA would not allow a period of time longer than the anticipated life of the project, and there are other factors that will enter into it. The fact that one may get a 15- or 20-year interest free loan should certainly be a major factor helping industry arrive at a decision. Regarding pretreatment required for an industrial waste, this will be in the guidelines that EPA hopes will be out soon.

If industry must pay for the construction, operation, maintenance, and replacement costs of a treatment plant, will it have any ownership of that portion it pays? Will industry be given a part in the design or operation of treatment plants for which it will have to pay?

No. The industry will not have ownership. The community will presumably consult with the industry on pretreatment facilities loadings, etc.

What provisions are being made for communities who are served by a large sanitary district and whose collection system infiltration contributes to the overloading of that sanitary district?

The law explicitly states that after July 1, 1973, no grants will be given to facilities with excessive infiltration. Decisions will be made on a project basis and a cost effective analysis will be an important factor in that decision.

What about communities whose present plants are adequate according to population but are overloaded by excess clearwater? Will they be eligible for grants for infiltration studies and correction even though a new plant may not be required?

Yes, but based on a cost-effectiveness study and state needs priority certification.

Will grants be given for the actual reconstruction of sewerage collection systems of existing municipalities before upgrading of treatment facilities?

Yes, depending on state needs priority certification and a cost-effectiveness study. These could be on a firm-phased schedule. The construction of a plant could proceed before system upgrading or vice-versa.

What priorities will EPA establish for states to follow in allocating construction funds? How will these priorities relate to the permit program?

CAPCO JEN 0005232

Each state is primarily responsible for priorities. Senator Muskie in a Senate floor speech October 4, explained it is the intent that plants and facilities be funded first. Regarding priorities relating to the permit program, it was stated above there is a relationship but the precise nature is being developed. It should be pointed out, however, that a permit is required on new construction and an environmental assessment must be prepared. These will help establish priorities.

Does "best practicable technology" include any reference to social acceptance, for example, in the case of land treatment?

Environmental assessments are required on all projects. The answer is yes.

Will environmental impact statements be required by applicants or agencies as part of the planning process or as a prerequisite to the grant funding? If required, will guidelines be issued on content material and approval procedures to be followed?

The present guidelines require that environmental assessment be developed by the planning agency. The proposed guidelines are the same. An environmental assessment is as much a part of good water quality management planning as the technical engineering specifications.

What will the construction cost be based upon, e.g., the engineers' estimate or the accepted contractor's bid price?

The engineers' estimate based upon the most realistic contractor's bid price. The estimate submitted with a project must be one that can be reasonably expected to incur on that project.

Is there an estimate of how long the construction grant program will be stalled pending new rules and regulations on secondary treatment, user charges, etc?

Approximately $500 million of contractual obligations of 1973-74 grant funds was made prior to March 1, 1973. The regulations must be drawn carefully so that grants will not be awarded and federal money invested in a project that later could not get a federal discharge permit.

Will "best practicable" treatment involve economic evaluation of providing additional degrees of treatment beyond secondary?

The definition of "best practicable" control technology will include the economics of higher orders of treatment; economic evaluation is the key to the level of treatment required.

Is dropping of the reimbursible feature a requirement of the law on an EPA regulation?

There is no provision for reimbursement in the law.

Are infiltration studies mandatory?

It is mandatory that a brief report be prepared to establish whether there is or is not an infiltration and/or an inflow problem.

If the result of this appraisal indicates there is a problem, then it is mandatory that a study be carried out and a remedial program be developed. The program should be defined and a realistic schedule laid out and a commitment made to proceed. The design of the waste treatment facility then should reflect the results of this program.

Are infiltration funds available for plants built under previous programs?

Yes, provided it received the prerequisite state priority certification.

In a regional system, who is responsible for the infiltration entering a trunk system? Is it the regional authority or the community whose internal system is causing the infiltration? Who must make the infiltration study?

CAPCO JEN 0005233

The EPA contract is with the contracting authority. The authority would provide for carrying out the necessary investigations and develop a remedial program. The individual community, however, may apply for a grant for such a study within a regional system.

How do we learn about the status of best practicable technology during the time that it is now being defined?

National associations such as the Federation as well as individuals have had a part in the development of the regulations and guidelines. Such organizations have a responsibility for keeping their membership apprised of developments. The EPA regional offices will continue to provide such information as soon as it is available, directly and through the state water pollution control agencies.

What is the present and anticipated status of funding for basin planning as provided for under Section 102(c)?

There has been no money provided for fiscal year 73. Funding for fiscal year 74 is under consideration. The actual amounts have not been determined. Funding for area-wide and basin-wide planning will be available under sections 201, 208, and 303.

Does the planning board of a metropolitan city qualify for recognition (and funds) under the new law?

If the governor designates the planning board and the designation is approved by EPA the board can qualify.

Would there be one central agency named that would coordinate the other agencies with expertise, or would several agencies be named?

There may be several agencies involved. The governor will probably name a lead or coordinating agency, but expertise needed for planning could be obtained through additional agencies.

Under Section 208, can areawide management be imposed on a municipality if there is no physical difference in plant construction? For example, a country sewerage authority operating several municipal plants.

When the state feels that there is a reason for a regional system to be constructed in a given area, the state can designate that area and thereby impose regionalization. However, designations are subject to public hearings and there is recourse for the local jurisdictions involved. Likewise, if the state doesn't formally designate or does not designate the chief elected officials of the local jurisdictions can submit application for a 208 authority, thereby requiring all the jurisdictions to comply with the 208 plan.

Combined wastewater overflow treatment facilities seem to be lost in priority schedule. If separation is demonstrated as the most economical pollution control can the priority be advanced and funds applied to separation?

The state hopes this can be done. We would like to have EPA tell us that, if an application is received at the state level where separation is necessary to put in a system of treatment for a municipality which will be effective, EPA will put that at top priority if we give it that priority. The state needs a simple type of definition or explanation from EPA of priority category. The state has about a dozen different projects that must be considered in a high priority category that have a great deal of separation involved.

CAPCO JEN 0005234

PERMITS AND ENFORCEMENT

PERMITS AND ENFORCEMENT (TITLES III AND IV)

The new law makes a number of changes in the nation's historic approach to achieving clean water. It attempts to correct past inactions in both monetary and regulatory aspects. The approach is now more oriented toward effluent discharges than to the ambient quality of streams. It sets up a national system of discharge permits.

The Congress wants the permit program in the hands of the states as long as the state meets certain minimum requirements. The program covers municipal, industrial, commercial, and agricultural discharges.

The EPA met the deadline of issuing guidelines for administering the permit systems. So-called short forms for a permit application are out. An application form requiring considerably more detail is being designed for municipalities having a population over 10,000, those who receive a significant part of their raw wastewater from industry, or those receiving waste from an industry of significant size.

A monitoring report form has also been designed. It will prescribe the parameters to be monitored, the frequency of monitoring, and required records for permitted discharges.

A standard permit form is being developed. Some administrative decisions are being made as to exemptions for permits, because it is not practical to attempt to permit every discharge in the country.

There should be no loss of continuity of states with interim permit program authority in converting to full operation of the program when final approval is granted by EPA.

Permits must be issued before certain other activities can proceed. For now, permits will focus in areas where water quality standards are more stringent than best practicable control technology will provide.

For industrial discharges, guidelines will be developed for 27 specific categories of industry; there may be additional categories. Before these are promulgated, however, permits may be issued in cases where EPA feels it has sufficient data to proceed or in areas where the purposes of the act can be best served by not waiting. Such permits would be considered standard with no expectation of re-issue at a later date.

Comments—Questions and Answers

The California State Water Resources Control Board does not consider the user charge requirement as permitting the use of property taxes on general fund revenues to suffice for industry paying its share of treatment plant operating, maintenances, or capital costs. Service charges based on quantity and quality must be utilized for industry. California may be more restrictive in this than is required by federal law.

Under the new law, the federal government does not really delegate the discharge permit program to the states. It only suspends the federal program in those states that qualify as having adequate programs; a state must, through its own laws and codes, have authority to carry out the provisions of the federal law. California has such authority.

While the new law applies to navigable waters, California is interpreting it to mean all surface waters of the state.

The definitions of best practicable and best available control technology are going to be very important. The EPA should be as precise as possible so that the definitions can be applied to actual situations; California will apply a case-by-case method to each discharger. The net result of the new law in the state will be a joint federal-state program.

A major, but perhaps barely perceptible, provision in the law requires that no one who receives 10 percent or more of his income from a waste discharger can be involved in any agency or group that handles any facet of the permit program. In California, a number of the members of the regional water quality control boards will have to resign.

Hawaii is unique. It is land poor but water rich. Hawaii looks on its water as a resource to be utilized in the best way possible.

Hawaii intends to require and enforce permits, schedules of compliance, and performance standards to the fullest extent possible. All systems will have to provide secondary treatment, but what the state can actually do will depend on the construction grant allocation.

Industry, primarily pineapple and sugar, is the lifeblood of Hawaii. Some industry is going out of business because of the environmental push.

Hawaii feels it must have some measure of local autonomy and self-determination. Water is not just to be looked at, it must be used, and Hawaii hopes it will be allowed to use the water.

CAPCO JEN 0005236

There is no way that the California portion of the Los Angeles basin is going to meet federal environmental standards by the legislated dates. The fundamental reason is money.

Enforcement, too, is something of a deterrent. When one begins to talk about taking someone to court, all action stops. A waste discharger will not improve his discharge until the court eventually (perhaps within 2 to 5 years) tells him what to do.

Defining best practicable control technology is difficult. There is no such thing as a "typical" industrial plant, each one is one of a kind. It is extraordinarily hard to find two plants that are similar.

We also suffer from "paralysis by analysis." The longer a program is studied the harder it is to come up with any answers. One must make the best guess now and go ahead. Everything done in the real world has both good and bad effects.

If urban impact areas are defined as those areas where secondary treatment and best practicable control technology are not enough, California will have some odd urban areas.

The EPA has a real timetable headache. It is hoped that they will set standards at a reasonable level with a progressive timetable, that interpretations will be reasonable, and that there will be an ability to comply.

We have to see some time period in which we can allow the program benefits that are established or determined to become viable and to evaluate whether a standing can continue to exist. For example, zero discharge is really the only standard to which industry can look. It may not be a realistic goal.

Industry is concerned about the pretreatment guidelines. To reach a specified level of concentration of some parameter may require extremely high pretreatment efficiencies. The incremental cost of removing a pound of BOD, for example, must be considered. Economy and cost are of integral importance.

Industry wants to help improve our environment in a realistic manner and at a pace that is both progressive and responsive.

Within certain industries there are striking similarities among plants within that industry. From industry to industry situations are unique, but every plant in every industry does not constitute a unique problem.

Is EPA or anyone looking at the act's economic impact on the private sector, that is, the costs the industrial polluters will bear and the markets opened up by the act for treatment equipment, supplies, and services?

In hearings on the act, industry pointed out that the application of additional treatment to remove the last 10 percent of a pollutant is expensive and has a significant effect on the other nonwater-quality related environment impacts. In applying additional treatment to either municipal or industrial wastes, we are likely to find that the equipment needed is not as readily available as might be desirable.

Are federal installations required to have a discharge permit?

Yes. They must apply on a long-form application.

Will permits be required for industrial discharges to a municipal plant?

No.

To whom is a refuse act permit application that was returned for more information to be submitted now?

Send it to your EPA regional office.

When will permits applied for two years ago under the refuse act be issued?

These are considered valid applications under the new law. There are about 20,000 on file and they are being processed.

Will treatment plants operated by a federal agency be classified as publicly owned?

No, not for the normal context of Section 402 (permits). Publicly-owned plants will generally receive a discharge permit from the state if the state is operating its permit program; federal installation may only be permitted by EPA.

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If the administration continues to limit funding, when will EPA or the states begin to adjust compliance schedules to be consistent with the funding?

The statutory requirement is for the 1977 deadline and goals.

How will industrial dischargers be affected by the pretreatment guidelines where they might be in conflict with requirements of the local agency? Will the guidelines be enforced inside a local system to the industrial discharger?

When the pretreatment guidelines are promulgated, any violation is subject to enforcement under the act. If there are additional requirements imposed by a local agency the discharger will also have to meet them. The local agency is required to impose the federal pretreatment requirements on all dischargers to its system. The federal guidelines are enforceable within a local jurisdiction by federal and state agencies.

What aspect of the amendments give EPA the legislative authority to regulate deep-well disposal as the NPDES regulations propose to do?

None. The federal statute does not really give EPA authority to regulate deep-well disposal except as it might relate to a technique used by a discharger for ultimate disposal of a portion of its waste and for which the other part would require an NPDES permit. But there is no real statutory authority for EPA as it relates to deep-well disposal. There is a requirement, however, that a state have statutory authority for regulating deep-well disposal as a prerequisite to receipt of the final permit issuing authority of the national system.

Is continuous discharge of oil from an onshore facility within the purview of the permit program or of the Section 311 spill program?

A continuous discharge would be under the permit program.

Will private domestic waste treatment systems be required to obtain NPDES permits?

Yes.

What is the probability of certain "minor" discharges (small animal wastewater facilities, small domestic wastewater facilities) being excluded from the NPDES permit program?

There is no blanket answer. The act is specific in requiring that all discharges are covered. The new draft of promulgations has a section on exemptions in essence saying that some exceptions may be granted, such as for well-operated motors on boats or certain types of agricultural discharges.

What will the timing be to obtain a permit on small discharges such as 25,000 gpd? Would the permit necessarily go through permit procedure?

Priorities must be established and lesser discharges will not get top priority for processing, although the application will still go through normal procedures.

EPA has established some deadlines for permit applications before commencement of discharges. Application forms are not available at this time. What is the effect of not complying with the deadline?

Everyone should at least get some written submittal into EPA or the state in order to initiate action. This could be in the form of a letter until EPA issues a short form. Regarding the issuance of the smaller permits, there will be difficulty in getting programs operating smoothly. As far as EPA is concerned, the initial thrust would be to hit the major dischargers, recognizing that permits will be required for smaller dischargers. States will have to permit these until other guidelines are issued and become clear. Short forms will be available shortly at the regional offices and in the states. Standard forms for communities with a population over 10,000 will soon be advertised in the *Federal Register.*

What is the present status of the Army Corps of Engineers permit program? Will an industry that has submitted a Corps of Engineers' permit form be required to submit an EPA permit form?

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New statutes have done away with the permit required under the 1899 Refuse Act. But applicants under the Refuse Act are deemed to be applicants under the national pollution discharge elimination system. A transfer operation of files from the Corps of Engineers has been underway for some time. Anyone having a Corps of Engineers permit problem can communicate with EPA regarding it.

Who has enforcement responsibility and power over pretreatment requirements for industries discharging to a municipal system?

If the state is authorized to operate the program it has the enforcement power that the act gives. States will also operate under state laws compatible with the federal act. Clear authority exists in the act to permit EPA to enforce pretreatment requirements.

In what situations is the regional administrator likely to demand a public hearing regarding a proposed state permit issued under the NPDES?

The regional administrator is not likely to make many demands for public hearings. If the state has authorization to operate the program the state director will make those decisions on the general understanding of the situation. Public hearings will not be required unless people requesting them have some basis in fact for asking and have some standing to bring a law suit.

Can a public hearing by a citizen be requested when such suit power is permitted under the act?

EPA thinks that they have the authority to deny such a request under the act. Courts, however, could rule otherwise. There must, however, be good basis for the suit.

What are the criteria on which EPA will determine proportional industrial capital costs for user charges?

Statutes say that EPA will not allow industries to put waste into municipal systems if those facilities cannot adequately handle the load. To make sure that does not happen, the federal government will begin to prescribe what constitutes adequate pretreatment for an industrial waste going into a municipal system defined as secondary. Consultants are now working on the definition of secondary treatment. Congress has said that if you do not discharge to a navigable water but discharge into a municipal plant, industry will have to do sufficient pretreatment so that further treatment by the municipality will equal the same kind of loading going to the river, as if industry does it itself under the national permit system. Until secondary treatment is defined, not much can be done in this area.

Is the discharge of impounded water from a hydroelectric facility subject to permit regulation?

Not at this time.

Will NPDES permit be required for spray irrigation systems?

Not at this time. This has been an area of some problem in determining what is a point source of pollution. EPA is working on this. All organizations irrigating more than 3,000 acres will have to apply for a permit. Difficulty is in determining return flow procedures. Draft regulations will be in the *Federal Register* within the next 30 days, asking for comments. State requirements relative to agriculture vary widely at the present time and some states (such as cattle raising states) have stringent rules.

Please clarify 10-year immunity? Does it apply both to municipal and industrial plants?

No it does not. It applies only to those new sources of industrial discharges that put in facilities to meet new source performance standards. EPA cannot go back to require more of them than at the time the permit was issued. A 5-year permit would be renewed for another 5 years. Some question exists regarding existing industry meeting new source performance standards, but there have been no test cases in challenge thereof. The law prescribes a 5-year permit limit.

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What will be the units (concentration, lb/day, lb/1,000 lb of product) for NPDES permits? Will these limits b maximum averages or running averages? Monthly or yearly averages? How often will reporting be require

Generally in terms of loadings rather than concentration. Some of the larger discharges would require da monitoring; in other instances at less frequent intervals. It is a matter of judgment, but guidelines are bei developed on the basis of the receiving waters and particular circumstances involved. Enforceme requirements must be kept in mind. EPA is trying through workshops to develop some uniformity in applicatio of monitoring requirements. An instantaneous maximum figure will be developed.

From what source other than the Federal Register can we get water quality legislation both proposed an enacted?

Write to the regional office involved.

Under the NPDES, will EPA's interpretation of best practicable treatment always prevail? If not, when, ho and based upon what criteria will other valid evaluation of BPT dictate effluent limitations?

In the area where water quality standards govern, that is, where the best practicable treatment is applied to a dischargers, standards cannot be met, dischargers will be required to do something additional to be practicable. With the exception of those instances, EPA determination of best practicable treatment will preva A state would have to show cause for going more stringent on any one discharger. Congress had in mind rather mechanical type of application of these numbers. As engineers we can't quite see that happening, bu there will be adequate input into finalization of these best practicable limits not only by the concerne industries but by the states and the concerned public as well.

What is an industry?

This is a legal question. However, the law applies to all point discharges.

In Section 304 that requires development of water quality criteria, the development of factors to preserv biological integrity of the water, and the development of guidelines for effluent limitations, all subsections ar preceeded by the words "after consultation with federal and state agencies and other interested persons Are procedures being developed for getting this input from various sources?

EPA is developing procedures for the public input. Public participation regulations were recently published the *Federal Register*. The statute also requires formulation of a standards board that has been appointed an met for the first time on March 2, 1973. All changes in standards, performance requirements, etc., will b presented to that board. They will hold meetings across the country to get public input.

This question, because of the length, was not read. It deals with the preservation and protection o marshlands. As we get into the new treatment technologies and abatement measures for large industri located on estuarine areas and large marshlands, it can be expected that these will be sites desired for ne treatment plants.

EPA has been working closely with the Department of Interior to assure that valuable marshlands are n destroyed for the purpose of building waste treatment facilities. Regulations will be forthcoming on the parts the statute as they relate to dredging, fill-type permits, ocean dumping programs. Section 404C does provid the administrator the opportunity to veto some activities in these areas and he does intend to invoke the a whenever deemed advisable.

What are the specific requirements that must be contained in state certification for the NPDES permit? A the certification regulations being drafted now, and, if so, when will they be published?

At this point regulations are not being developed. They will have to be. As for specific requirements, the state whoever is rendering the certification will in effect certify that what will be done will meet the best practical control technology. There will of course be tie-ins to water quality standards.

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How safe are the present "interim guidelines" for discharge by the 21 industry groups for which they were prepared? Should an owner proceed on these or wait for formal regulations of effluent standards (best practicable and best available)?

EPA never advises waiting. State pollution control agencies generally recommend proceeding with the requirements in existence. The panel believes that permits that have been issued will be good for the period for which they were written. It is essential not to get into delaying situations that will permit pollution to continue. The problem is basically not with states but with small local jurisdictions that have failed to move forward, primarily because of financial problems. EPA will prepare permits on the basis of guidance documents that are deemed to be sound.

Effluent limitations on concentrations discourage recycling and discourage water conservation. If a plant reduced water usage 50 percent would the permit allow doubling the concentration levels?

Actually, the permits are being written and the guidelines are being prepared primarily on a basis of pounds per unit of production. In this particular case, if the limit would be in pounds and if the water is reduced and the concentration is increased, it would be necessary to calculate the actual water being discharged against the total to see if it means a pound limitation. For example, in the sugar beet industry, one particular plant is based on 1,500 lbs of BOD per day. It makes no difference if water is cut back as long as the BOD limitation is met. Discharge must always be within the stream classification. What is important is the pounds being discharged to the river within the stream classification.

The statement was made that geographical advantages would no longer exist, but if one plant discharges to a small stream and its effluent is restricted more that BPT, is it not geographically penalized?

Yes, it is definitely geographically penalized. The whole concept of the BPT is that there will be a base, but we must look at the water quality standards for the particular stream and the particular discharge must meet those standards. Obviously there is no equity in geography by itself.

Will municipalities be required to monitor their plant effluent?

Yes, and information will have to be furnished to the state and EPA and will also be available to the public if they wish to see it.

What is meant by no discharge? No return of water, no pollutants to surface or groundwater, etc.?

Almost the first words of the law state it is the national goal that the discharge of pollutants into navigable waters be eliminated by 1985. This is the only place in the act where this goal is mentioned. There is no question of zero discharge of water. It is zero discharge of pollutants.

Will there be numerical salinity standards involved with permits for irrigation return flows?

In letters sent to the states, EPA requested that numerical standards be set for salinity, especially in the Colorado River. The states have concurred in the request and have until October 1975 when numerical standards will be established for the Colorado River.

How do you define a "point source" in relation to "irrigation return flow"?

Irrigation return flow will have to have a pipe or some kind of channel that discharges into a surface water. That will be one of the requirements for the permit. If the water is seeped into the ground a permit will not be required. The states on the upper and lower Colorado River are themselves developing a water management system to address the total irrigation problem.

What is the present status of the permit program as applied to federal facilities and how does it work?

Federal facilities permits is the only area that will not be delegated to the states. The federal permits will be issued by the federal government. There are several cases filed in the east where the states are stating that this

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is not the proper action for federal government to take, therefore, EPA is awaiting action by federal cour Thus far the various cases EPA has are being permitted by the government. The permits will spell out a logic compliance schedule and within a given period of time the permittee will be required to meet the perm conditions.

Regarding public hearings on water quality standards, that is, for criteria and use classes as well as publ hearings on permits, who bears the cost?

It depends, if the federal government is issuing the permit the federal government will obviously bear the cost.

With regard to hearings, will cross-examination of witnesses be permitted?

In the federal program the hearing structure can have up to three hearings or meetings once the public notic is issued (there is no requirement for a hearing in every case). If there is reason for a hearing EPA will proce into one of the following:

1. The hearing could be a general prehearing type of conference or a meeting between discharger and anyon else who would desire to come to discuss the conditions of the permit. If a meeting of minds can be reached a this hearing the case will end there.

2. If 1 does not solve questions there will be a public meeting. There will be a general hearing with hearing officers. EPA hopes it would be made up of representatives of the federal government and of the state. This would be an information seeking meeting where the discharger and possibly environmental groups would give their opinions on the permit. Following this, there is a period of 20 or 30 days in which anyone with standing can require a formal public hearing.

3. Public hearing officers called judges, having no association with the area, will hold a formal judicial type of hearing. In such hearings there will be subpoenas, sworn testimony, of a full judicial type of hearing. After the hearing there could be appeals at the appellate level.

If municipalities have to monitor their own discharges, do their laboratories have to be certified? Do Industries? If not, how much value is placed upon these analyses?

There do not seem to be any certification requirements in the act per se. There has been a move in various states to certify the laboratories feeding the information into the states. Lack of requirements for certification could be a weakness in the federal law. Federal and state levels do expect, however, to take random sampling or sample splitting on a random basis and should then be able to verify anomalies between the various laboratories and possibly correct them. In one state a discharger's analysis has never been used as a basis for disciplinary action. The only analyses that are considered for such action are either those obtained by the local health department, the state health department, or those federal agencies have picked up in one way or another. The federal act does require monitoring. There are provisions against fraudulant information submission.

Can you give us an idea of what analyses and how often analyses will be required for a domestic treatment plant that receives and treats industrial waste?

The answer will depend on how the regulations will define secondary treatment. If the definition is on a monthly average then some provisions would have to be made for a certain amount of samples for a 30-day period and violation would have to be based on that. A sampling schedule will be set on an individual basis depending on the size of the plant and of the receiving stream. In this permit system each case will be treated on a case-by-case basis so provisions would thus be set up especially for particular industry classification.

When can we expect guidelines on point sources for industries?

EPA hopes to have these completed for certain industries by October 1973.

Are septic tank drain fields to be considered point sources?

If discharge goes into surface water the answer is yes. Otherwise, no.

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What standards will apply to industries with their own sanitary treatment facilities, municipal or industrial?

EPA has been considering industrial plants as having industrial wastes even if they do have some domestic waste. Municipal wastes are strictly domestic type operations. In draft permits, if industry has several point sources, different parameters might be applied to each source.

What is the significance of Section 402K?

This section says that if a particular industrial discharger has applied for a permit and the permit has either not been issued or administratively disposed of, no enforcement action can be taken until the end of 1974. However, until that time, states can take action under its regulations. However, there are federal provisions stating that if the discharge is toxic material detrimental to the environment, EPA will take action under other sections of the act.

When will California distribute the new "criteria for review of wastewater treatment facilities"?

At present a committee is working on this criteria and when complete it will be distributed.

What about permits for Indian tribe facilities? Who will issue these permits and who will be responsible for surveillance?

The latest information is that they will be treated as a federal facility.

Are effluent standards based on net or gross values?

Generally, if the the wastewater is returned to the source from which it came they are net values. If taken from another source and put into the river they are gross values.

After March 18 will EPA continue the state interim permit system, that is, should industry, say on May 1, submit applications to the state or just await further word?

After March 18 EPA has no statutory authority to continue the state interim authorizations. The law is clear on that point. Consequently, after that date any permits not issued by states must be issued by EPA. EPA will attempt to continue the same working relationships with the states that are provided under interim authorizations.

What is actually being done to get low-interest loans at the present time? Has legislation been prepared to provide financial assistance to industry and, if the answer is yes, please identify.

EPA feels that tax incentives are more symbolic than real under the state laws and local property tax incentives. The SBA policies have been found to be much too conservative thus far in guaranteeing loans to industry for industrial pollution control purposes, although the act itself has authorized an $800,000,000 appropriation specifically for water pollution control. There is no assurance that money will be appropriated and easily available for small business.

What is really needed in Massachusetts is an independent public authority to provide low interest bonds to provide a massive amount of monies for long-term loans to industries that otherwise cannot afford to or cannot borrow money in the conventional money market.

Why do you call industry expenditures for pollution control facilities nonproductive expenditures?

Expenditure by industry to achieve required water quality standards is not regarded by industrial managers as an expenditure in productive equipment. A product for sale is not thereby produced.

In the case that pretreated industrial waste discharged to a municipal sanitary waste treatment system can be shown not to interfere with the treated sanitary discharges, will EPA or the state agency nonetheless set tighter discharge specifications? Also, what is the legal status of discharge permits by municipal systems to industrial dischargers and what is the present interpretation from the point of view of best available treatment?

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In the case of the discharge of a pretreated industrial waste into a municipal system the point is related not only to whether or not there is interference but whether or not there is additional treatment to that discharge. The federal requirements are expected to take this attitude. The program will be geared to accomplish treatment and not only to protect municipal expenditure in treatment works.

Defining best practicable treatment cannot be handled on a blanket basis. An industry-by-industry basis is the intent of the federal law.

Are there going to be specific guidelines spelled out in writing defining effluent standards? Have any effluent guidelines yet been released? Comment on effluent guidelines on dissolved solids, and when may we expect EPA to define "best practicable treatment"?

Effluent guidelines when issued will be issued for industrial categories. They will attempt to set forth degree of treatment or control that can be obtained in a group of industries within a defined category. These will address each of the parameters of the discharge from the particular industry, establishing requirements for each parameter. Therefore, dissolved solids will be defined as will all other parameters. The deadline for this is October 18, 1973. These guidelines will have to be applied to each individual case. Numbers used will be affected by the size of the particular industrial plant. Once the approach becomes clear for basic categories it will then become possible for the professional people at state and federal levels to interpolate from certain points of reference to the standard that is in harmony with that general theme as they try to apply it to plants that present isolated examples of a distinct industry or specific problem.

EPA has been working for a long time on problems of what effluent guidelines should be. Since the fall EPA has been developing interim guidance numbers and documents covering 18 to 20 industrial categories. Useful commentary has been received. With ongoing contracts, EPA will come out with the numbers about October 18. It is hoped that results will be accepted as reasonable and will be effective.

Some conservation groups feel that the new law will be chaos unless the citizen suit provision is used. The permit system seems largely voluntary. Can you enforce a voluntary permit? Are you asking industry for the right type of information? What happens to a state program during this interim period?

There is a legal question about enforceability during the interim stages of the permit program, but EPA feels that permits issued during this period will be enforceable. EPA also believes that industry can supply data requested despite some protestations to the contrary. Our objective is to perpetuate existing state programs as much as possible. State programs will have to be amended to meet the basic elements of the new law. Efforts are underway to assist states as much as possible in developing necessary statutory authority and regulatory programs in order to move toward full EPA approval of state permit programs.

Can and will states set more stringent discharge requirements than imposed by the federal guidelines?

The law permits them to do so.

Is EPA able to administer a permit program in all 50 states if the states are unable to qualify their programs?

No. A sincere effort is being made to help the states get control over the program.

When must the permit application be filed?

For dischargers without a Refuse Act permit or application the deadline is 180 days after enactment of PL92-500 or approximately April 18. Short-form applications are out for industrial, municipal, manufacturing, and agricultural discharges. These forms constitute a preapplication submission for those discharges that may require more detailed information but will suffice for many applicants. This method is being used in order to meet the time deadlines; long forms are not yet available.

Must commercial establishments have a discharge permit? Do cities with over 10,000 population have to apply?

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EPA has been working for a long time on the problem of what effluent guidelines should be. Since the fall EPA has been developing interim guidance numbers and documents covering 18 to 20 industrial categories. Useful commentary has been received. With ongoing contracts, EPA will come out with the numbers about October 18. It is hoped that results will be accepted as reasonable and will be effective.

For dischargers without a Refuse Act permit or application the deadline is 180 days after enactment of P.L. 92-500 or approximately April 18. Short-form applications are out for industrial, municipal, manufacturing, and agricultural discharges. These forms constitute a preapplication submission for those discharges that may require more detailed information but will suffice for many applicants. This method is being used in order to meet the time deadlines (long forms became available April 19, 1973).

All commercial establishments discharging to a navigable stream must submit a short-form application. EPA then determines whether those discharging 50,000 or more gal.day must submit additional information; if their discharge is to a public sewer they are not required to provide this information. Cities with over 10,000 population do not have to file the short form; their first filing will be the long form.

A municipality receiving industrial wastes must furnish certain information about each discharge, but the individual industries are not required to have a permit. The EPA has enforcement authority over municipal permits to industry.

Will permits be required for storm water overflows?

Experience in New York City indicates yes. Definitions in the act are very broad. Any pollutant from a point source which enters a navigable waterway and is man made or man induced as a point source is required to file for a permit.

When will permits for ocean disposal be required?

Point source discharge to the ocean is covered under PL92-500. Ocean disposal requirements are set forth by the Marine Protection Research and Sanctuaries Act of 1972 (PL92-532 enacted October 23, 1972). A permit for ocean disposal must be obtained from EPA beginning April 23, 1973 as provided by PL92-532.

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APPENDIXES

federal register

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PART III

ENVIRONMENTAL PROTECTION AGENCY

■

State Program Elements Necessary for Participation in the National Pollutant Discharge Elimination System

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Title 40—PROTECTION OF ENVIRONMENT

Chapter I—Environmental Protection Agency

PART 124—STATE PROGRAM ELEMENTS NECESSARY FOR PARTICIPATION IN THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

Notice was published in the FEDERAL REGISTER issue of November 11, 1972 (37 F.R. 24087) that the Environmental Protection Agency was giving consideration to proposed guidelines for State program elements necessary for participation in the National Pollutant Discharge Elimination System. The proposed guidelines described, pursuant to the authority contained in section 304(h)(2) of the Federal Water Pollution Control Act Amendments of 1972 (86 Stat. 816; 33 U.S.C. 1314 (1972)) (hereinafter referred to as the "Act"), the minimum procedural and other elements of any State programs under section 402 of the Act.

Section 402 of the Act creates a National Pollutant Discharge Elimination System under which the Administrator of the Environmental Protection Agency may, after opportunity for public hearing, issue permits for the discharge of any pollutant or combination of pollutants, upon condition that such discharge will meet all applicable requirements of the Act relating to effluent limitations, water quality standards and implementation plans, new source performance standards, toxic and pretreatment effluent standards, inspection, monitoring and entry provisions, and guidelines establishing ocean discharge criteria. Section 402 also provides that States desiring to administer their own permit programs may submit a full and complete description of such a program to the Administrator for approval. The Administrator is to approve a State's program, and suspend issuance of permits under section 402, unless he determines that the State does not possess adequate authority to perform certain acts detailed in section 402(b) of the Act. In general terms, the State must have authority to: (a) Issue permits for terms not exceeding 5 years upon the same conditions relating to effluent limitations and water quality standards as are applicable to permits issued by the Administrator; (b) adequately notify members of the public, other States, and the Secretary of the Army of pending permit applications; (c) abate violations of permits, including civil and criminal penalties; (d) insure that the State permitting agency receive adequate notice of new introductions or substantial changes in the volume or character of pollutants introduced into publicly owned treatment works; and (e) insure that any industrial user of publicly owned treatment works complies with pretreatment effluent standards and other requirements. The State also must have an approved continuing planning process under section 303(e) of the Act before approval of its permit program can be granted.

In addition to these requirements, a State permit program cannot be approved unless it conforms to guidelines issued under section 304(h)(2) of the Act prescribing minimum procedural and other elements of any State program under section 402. These guidelines, which are the subject of this notice, must include, but are not limited to, monitoring and reporting requirements (including procedures to make information available to the public), enforcement provisions, and requirements for funding, personnel qualifications, and manpower.

Written comments on the proposed guidelines were invited and received from interested parties. A number of verbal comments also were received. The Environmental Protection Agency has carefully considered all submitted comments. All written comments are on file with the Agency. Certain of these comments have been adopted or substantially satisfied by editorial changes, deletions from, or additions to the guidelines. These and other principal comments are discussed below.

1. Several commenters pointed out the need to make clear that participating States and interstate agencies should have all procedures required by the guidelines established by the State or interstate agency in the form of duly promulgated regulations. The delays inherent in the process of promulgating such regulations, however, should not delay the Administrator's approval of an otherwise acceptable program. To implement these concerns, a new § 124.3 has been added to subpart A to make clear that all authorities required by section 402(b) of the Act must be in the form of State statutes and regulations and must be in full force and effect at the time of submission of the State program. A new § 124.4 requires that the procedures required by the guidelines must also be in the form of State statutes and regulations but, if the State has the necessary authority and submits a program which meets the requirement of the guidelines, the State has until January 1, 1974, to promulgate such regulations.

2. Numerous comments suggested means to improve the requirements for signing NPDES forms. On the basis of the comments, corporate signature requirements have been changed to permit signature by authorized representatives of principal executive officers where such representative is responsible for the operation of the discharging facility. See § 124.24(a). Also, the language in subsection (d) is broadened to cover categories of point sources other than publicly owned treatment works.

3. On the basis of comments received and after consulting with the States involved in the development of these guidelines, a new paragraph was added to § 124.31 to require the compilation of draft determinations and conditions into a draft permit. Such draft permit is to be made available to the public for inspection and copying.

4. Comments received indicated [illegible] agreement between citizens and St[illegible] as to the proper length of the period [illegible] public comment following public not[illegible] It was decided not to require the ext[illegible] sion of the period for public comm[illegible] beyond 30 days but to allow the Dir[illegible] tor to extend such period where, in [illegible] discretion, he finds such extension is [illegible] sirable. See § 124.32(b). To save t[illegible] however, citizens may now be placed [illegible] a mailing list to receive copies of f[illegible] sheets without the necessity of requ[illegible] ing such fact sheets following public n[illegible] tice. In those cases where fact sheets [illegible] prepared, the fact sheet can be sent [illegible] the same time public notice is mad[illegible] See § 124.33(b).

5. Comments from States advi[illegible] against the requirement to prepare a f[illegible] sheet for every application for a perm[illegible] Section 124.33 has been modified to r[illegible] quire the preparation of fact sheets on[illegible] for those discharges which exceed 500,0[illegible] gallons on any day of the year. The pre[illegible] aration and distribution of fact shee[illegible] is thus limited to the larger and mo[illegible] controversial discharges. An inform[illegible] survey in one of the EPA regions ind[illegible] cates that approximately 35 percent o[illegible] the applications received were for di[illegible] charges in excess of 500,000 gallons. Th[illegible] Director may, of course, prepare fac[illegible] sheets for smaller discharges.

6. Many commenters pointed out th[illegible] discrepancy between § 124.35 regardin[illegible] the handling of confidential informatio[illegible] and EPA's regulations for such data, 4[illegible] CFR Part 2. Section 124.35(b) has bee[illegible] modified to require the Director to pro[illegible] tect information (other than effluen[illegible] data) shown to constitute trade secret[illegible] Where the determination of confidenti[illegible] tiality by the Director is with regard t[illegible] information contained in an NPDE[illegible] form and the Regional Administrato[illegible] disagrees with such determination, pro[illegible] cedures consonant with 40 CFR Part [illegible] apply. See § 124.35(b).

7. Comments from industry and fro[illegible] environmental groups pointed out th[illegible] need for further clarification of publi[illegible] hearing requirements. Almost all such[illegible] suggestions have been incorporated, in[illegible] cluding a requirement, submitted from[illegible] environmental groups, that the Directo[illegible] is required to hold a hearing in every[illegible] case where there is significant public in[illegible] terest (including, of course, the filing o[illegible] requests or petitions for such hearing). [illegible] Any instances of doubt should be re[illegible] solved in favor of holding the hearing. [illegible] See § 124.36.

8. Much concern has been expressed [illegible] over the setting of permit schedules of [illegible] compliance and their enforcement. To [illegible] achieve some degree of uniformity and [illegible] to assist the preparation of compliance [illegible] schedule reports, the Director is now re[illegible] quired, to the extent practicable, to set [illegible] schedules of compliance so that interim [illegible] and final dates fall due on the last day [illegible] of the months of March, June, Septem-

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ber, and December. Four times a year the Director shall prepare and transmit to the Regional Administrator a list of all instances of noncompliance with the schedule requirements in a permit. Such list shall be available to the public for inspection and copying. See § 124.44.

In cases where good and valid cause (such as an act of God, strike, flood, etc.) lies for the failure of the permittee to comply with a schedule of compliance, revision of the permit may be appropriate. Any such revision must be approved by the Regional Administrator and all such revisions must be reported by the Director in his quarterly compliance schedule report. See § 124.72(b).

9. The requirement (§ 124.45(f) in the proposed guidelines) that a permit may not be transferred to a third party without the prior written approval of the Director has been taken out. As was pointed out in various comments, the permit terms and conditions must be observed regardless of the identity of the owner or operator of the facility covered by the permit. Written approval of the Director to any transfers of such facilities is not necessary for the transferee to be subject to the permit requirements.

10. A new standard permit condition has been added to clarify that any authorized discharge must be consistent with toxic effluent standards or prohibitions established under section 307(a) of the Act. See new § 124.45(g).

11. Numerous comments were made with regard to the provisions dealing with the disposal of pollutants in wells, arguing that EPA was exceeding, or not sufficiently exercising its authority under the Act. Language has been added to clarify that permits for well disposals are subject to the same procedures and requirements as other NPDES permits. See new § 124.80(c). The Regional Administrator is directed to distribute to the Director and utilize in his review of well permits any policies, technical information, or requirements specified by the Administrator. See new § 124.80(d).

12. Many comments received concerning the conflict of interest section, § 124.-94 (See section 304(h)(2)(D) of the Act upon which this section is based), indicate widespread difference of opinion as to the interpretation of both the language and the intent of the section. The guidelines attempt to specify EPA interpretation of some of the key terms without attempting to answer every question raised by section 304(h)(2)(D) of the Act. Subsection (a) has been modified to clarify the relationship between the board and its administrative counterpart. Any person who has or shares authority to approve permit applications is included within the term "board or body." Subsection (c) has been modified to clarify that it is the State agency—and not the employee of that agency—which is not included in the term "permit holders or applicants for a permit." Finally, a new subsection (c) has been added to indicate that payments from mutual funds or certain diversified investments are so remote as not to be income "directly or indirectly from permit holders or applicants for a permit."

It should be emphasized that nothing in these guidelines pertains to the issuance of permits for the discharge of dredged or fill material into the navigable waters. Such permits are to be issued by the Secretary of the Army, acting through the Chief of Engineers, pursuant to section 404 of the Act.

It also should be emphasized that these guidelines are procedural in nature and do not attempt to specify the scope of jurisdiction established under the Act or legislative history pertaining thereto.

Because of the importance of promptly making known to the States the necessary program procedures for participation in the NPDES and because of the 60-day deadline imposed by section 304(h)(2) of the Act for the promulgation of State program guidelines, the Administrator finds good cause to declare the guidelines effective immediately upon final publication.

Dated: December 18, 1972.

WILLIAM D. RUCKELSHAUS,
Administrator.

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124.80 Control of disposal of pollutants into wells.

Subpart J—Resources, Planning and Other Requirements

124.91 Availability of resources.
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Subpart K—NPDES Application and Reporting Forms [Reserved]

Appendix A—Sample Public Notice.
Appendix B—Sample Fact Sheet.
Appendix C—Sample Public Notice for Public Hearings.

AUTHORITY: The provisions of this Part 124 issued under section 304, 84 Stat. 816, 33 U.S.C. 1314 (1972).

Subpart A—General

§ 124.1 Definitions.

As used in this part, the following terms shall have the meanings indicated below:

(a) The term "Act" means the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1314, et seq.

(b) The term "Refuse Act" means section 13 of the River and Harbor Act of March 3, 1899.

(c) The term "EPA" means the U.S. Environmental Protection Agency.

(d) The term "Administrator" means the Administrator of the U.S. Environmental Protection Agency.

(e) The term "Regional Administrator" means one of the EPA Regional Administrators.

(f) The term "Director" means the chief administrative officer of a State water pollution control agency or interstate agency. In the event responsibility for water pollution control and enforcement is divided among two or more State or interstate agencies, the term "Director" means the administrative officer authorized to perform the particular procedure to which reference is made.

(g) The term "National Pollutant Discharge Elimination System (NPDES)" means the national system for the issuance of permits under section 402 of the Act and includes any State or interstate program which has been approved by the Administrator, in whole or in part, pursuant to section 402 of the Act.

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(h) The term "NPDES application" means the uniform national forms (including subsequent additions, revisions, or modifications duly promulgated by the Administrator pursuant to the Act) for application for an NPDES permit.

(i) The term "NPDES reporting form" means the uniform national forms (including subsequent additions, revisions, or modifications duly promulgated by the Administrator pursuant to the Act) for reporting data and information pursuant to monitoring and other conditions of NPDES permits.

(j) The term "NPDES permit" means any permit or equivalent document or requirements issued by the Administrator, or, where appropriate, by the Director, after enactment of the Federal Water Pollution Control Amendments of 1972, to regulate the discharge of pollutants pursuant to section 402 of the Act.

(k) The term "NPDES form" means any issued NPDES permit and any uniform national form developed for use in the NPDES and prescribed in regulations promulgated by the Administrator, including the Refuse Act application, the NPDES application and the NPDES reporting forms.

(l) The term "Refuse Act application" means the application for a permit under the Refuse Act.

(m) The term "Refuse Act permit" means any permit issued under the Refuse Act.

(n) The definitions of the following terms contained in section 502 of the Act shall be applicable to such terms as used in this part unless the context otherwise requires: "State water pollution control agency (referred to herein as 'State agency')," "interstate agency," "State," "municipality," "person," "pollutant," "navigable waters," "territorial seas," "contiguous zone," "ocean," "effluent limitations," "discharge of a pollutant," "toxic pollutant," "point source," "biological monitoring," "discharge," "schedule of compliance," "industrial user," and "pollution."

(o) The term "national data bank" means a facility or system established or to be established by the Administrator for the purposes of assembling, organizing, and analyzing data pertaining to water quality and the discharge of pollutants.

(p) The term "applicable water quality standards" means all water quality standards to which a discharge is subject under the Act and which have been (1) approved or permitted to remain in effect by the Administrator pursuant to section 303(a) or 303(c) of the Act, or (2) promulgated by the Administrator pursuant to section 303(b) or 303(c) of the Act.

(q) The term "applicable effluent standards and limitations" means all State and Federal effluent standards and limitations to which a discharge is subject under the Act, including, but not limited to, effluent limitations, standards of performance, toxic effluent standards and prohibitions, and pretreatment standards.

(*Comment.* The House committee print states: "The committee points out, as it did in the discussion of section 401, that the term 'applicable' used in section 402 has two meanings. It means that the requirement which the term 'applicable' refers to must be pertinent and apply to the activity and the requirement must be in existence by having been promulgated or implemented.")

(r) The term "minor discharge" means any discharge which (1) has a total volume of less than 50,000 gallons on every day of the year, (2) does not affect the waters of any other State, and (3) is not identified by the Director, the Regional Administrator, or by the Administrator in regulations issued pursuant to section 307(a) of the Act as a discharge which is not a minor discharge. If there is more than one discharge from a facility and the sum of the volumes of all discharges from the facility exceeds 50,000 gallons on any day of the year, then no discharge from the facility is a "minor discharge" as defined herein.

§ 124.2 Scope and purpose.

(a) This part establishes guidelines specifying procedural and other elements which must be present in a State or interstate program in order to obtain approval of the Administrator pursuant to section 402 of the Federal Water Pollution Control Act, as amended, 86 Stat. 816, 33 U.S.C. ____.

(b) A submitted State or interstate program which conforms to the guidelines of this part and which meets the requirements of section 402 of the Act shall be approved by the Administrator. Upon approval, the Administrator shall suspend his issuance of NPDES permits as to those point sources subject to such approved program.

(c) Any State program which obtains the approval of the Administrator pursuant to section 402 of the Act shall at all times be in accordance with section 402 and the guidelines contained in this part.

§ 124.3 Form of authority cited by Attorney General.

All authorities cited by the State attorney general as authority adequate to meet the requirements of section 402(b) of the Act (a) shall be in the form of lawfully promulgated State statutes and regulations and (b) shall be in full force and effect at the time the Attorney General signs the Attorney General's statement.

§ 124.4 Authority for State program procedures.

(a) All procedures which the State proposes to establish and administer to conform with the requirements of this part shall be set forth in State statutes or lawfully promulgated State regulations. Such State statutes and regulations shall be in full force and effect at the time the Governor submits the State program to the Regional Administrator.

(b) Notwithstanding paragraph (a) of this section, if the State or interstate agency has the statutory authority to establish and administer the procedures which conform to the requirements of this part, regulations setting forth the requirements of this part may be promulgated by the State subsequent to the time the Governor submits the State program to the Regional Administrator if the Administrator finds the following:

(1) The State has submitted a and complete description of proced to administer its program in conf ance with the requirements of this p and

(2) The State has made a wr commitment to the Administrator promulgate regulations which meet requirements of paragraph (a) of section by January 1, 1974.

Subpart B—Prohibition of Discha of Pollutants

§ 124.10 Prohibition of discharges State waters.

Any State or interstate program p ticipating in the NPDES must ha statute or regulation, enforceable State courts, which prohibits discha of pollutants by any person, except as thorized pursuant to an NPDES per

(*Comment*). For the purposes of this part, a State or interstate program qualify for participation in the NPDES prohibits discharges of pollutants to the extent such discharges are prohibited in tion 301(a) of the Act. It is recognized some State or interstate programs pres exempt or exclude certain categories, ty or sizes of point sources from the general hibition of the unauthorized discharg pollutants or from the requirement of taining a permit. Other States have in e "grandfather" clauses which either exe discharges already in existence or provid automatic issuance of a permit to exis dischargers. Exceptions to the general pr bition cannot be approved. Depending their scope and nature, any such except will either (1) constitute grounds for w holding approval of the entire submit program until such time as the State interstate agency revises or modifies its p gram to conform to this subpart, or (2) o stitute categories, types, or sizes of po sources for which the Administrator will suspend the issuance of NPDES permits. the latter case, the Administrator will i NPDES permits for those point sources subject to the State or interstate agen authority.)

Subpart C—Acquisition of Data

§ 124.21 Application for NPDES per

Procedures of any State or interst agency participating in the NPDES sh insure that every applicant for an NPD permit complies with NPDES filing r quirements. Such procedures and r quirements shall include the followin

(a) A requirement that any per discharging pollutants must:

(1) Have filed a complete Refuse A application; or,

(2) File a complete NPDES applic tion no later than 60 days following r ceipt by the applicant of notice from t Director that the applicant's previou filed Refuse Act application is so deficie as not to have satisfied the filing r quirements; or,

(3) File a complete NPDES applicati within a stated period, not to exceed a

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applicable periods specified in Federal regulations for persons filing under the NPDES.

(*Comment.* Federal filing requirements for the NPDES include the timely filing of a properly completed Refuse Act or NPDES application form. State and interstate agencies may specify, where necessary, additional filing requirements such as the submission of engineering reports, plans, and specifications for present or proposed treatment or control of discharges of pollutants. While duplication should be avoided, the Administrator recognizes that the NPDES application form may not by itself satisfy the needs of every participating program.)

(b) A requirement that any person wishing to commence discharges of pollutants after the applicable period in paragraph (a)(3) of this section, must file a complete NPDES application either (1) no less than 180 days in advance of the date on which it is desired to commence the discharge of pollutants, or (2) in sufficient time prior to the commencement of the discharge of pollutants to insure compliance with the requirements of section 306 of the Act, or with any applicable zoning or siting requirements established pursuant to section 208(b)(2)(C) of the Act, and any other applicable water quality standards and applicable effluent standards and limitations.

(*Comment.* The purpose of this requirement is to insure that the Director has sufficient time to examine applications from new sources of discharge of pollutants and to apply standards of performance without unnecessarily delaying scheduled startup. The sooner the Director can specify requirements for new sources, the more easily the applicant can modify his plans, if necessary, without disruption and waste. Those State or interstate agencies which begin review at the planning stages of a new project are in the best position to insure orderly compliance with new source standards.)

(c) Procedures which (1) enable the Director to require the submission of additional information after a Refuse Act or an NPDES application has been filed, and (2) insure that, if a Refuse Act or NPDES application is incomplete or otherwise deficient, processing of the application shall not be completed until such time as the applicant has supplied the missing information or otherwise corrected the deficiency.

(*Comment.* The Director may find he needs information other than that initially filed by the applicant in order to make a permit decision. The Director should not hesitate to go back to the applicant for further information. In some cases, nothing less than an on-site inspection of an applicant's pollution control technology and practices will suffice.

No NPDES permit should be issued until the applicant has fully complied with the filing requirements specified in this subpart. If an applicant fails or refuses to correct deficiencies in his NPDES application form, the Director should take timely enforcement action.)

§ 124.22 Receipt and use of Federal data.

Each State or interstate agency participating in the NPDES shall receive any relevant data collected by the Regional Administrator prior to such agency's participation in the NPDES in such manner as the Director and the Regional Administrator shall agree. Any agreement between the State or interstate agency and the Regional Administrator shall provide for at least the following:

(a) Prompt transmittal to the Director from the Regional Administrator of copies of any Refuse Act applications, NPDES applications, or other relevant data collected by the Regional Administrator prior to the State or interstate agency's participation in the NPDES; and

(b) A procedure to insure that the Director will not issue an NPDES permit on the basis of any Refuse Act or NPDES application received from the Regional Administrator which the Regional Administrator has identified as incomplete or otherwise deficient until the Director receives information sufficient to correct the deficiency to the satisfaction of the Regional Administrator.

(*Comment.* The two purposes of this section are: (1) To provide for the transfer of data bearing on NPDES permit determinations from the Federal Government to the participating State or interstate agencies, and (2) to insure that any deficiencies in the transferred NPDES forms will be corrected prior to issuance of an NPDES permit. The "agreement" mechanism allows flexibility in achieving both purposes. Time and manner of transfer can be worked out by each participating agency and the Regional Administrator. If agreed upon, deficient applications could either be retained by the Regional Administrator until completed or be transferred with the satisfactory applications. If the Director prefers to receive and correct deficient applications, the agreement could provide for the forwarding to the Regional Administrator of the information necessary to correct the deficiency.)

§ 124.23 Transmission of data to Regional Administrator.

Each State or interstate agency participating in the NPDES shall transmit to the Regional Administrator copies of NPDES forms received by the State or interstate agency in such manner as the Director and Regional Administrator shall agree. Any agreement between the State or interstate agency and the Regional Administrator shall provide for at least the following:

(a) Prompt transmittal to the Regional Administrator of a complete copy of any PDES form received by the State or interstate agency;

(b) Procedures for the transmittal to the national data bank of a complete copy, or relevant portions thereof, of any appropriate NPDES form received by the State or interstate agency;

(c) Procedures for acting on the Regional Administrator's written waiver, if any, of his rights to receive copies of NPDES forms with respect to classes, types, and sizes within any category of point sources and with respect to minor discharges or discharges to particular navigable waters or parts thereof; and,

(d) An opportunity for the Regional Administrator to object in writing to deficiencies in any NPDES application or reporting form received by him and to have such deficiency corrected. If the Regional Administrator's objection relates to an NPDES application, the Director shall send the Regional Administrator any information necessary to correct the deficiency and shall, if the Regional Administrator so requests, not issue the NPDES permit until he receives notice from the Regional Administrator that the deficiency has been corrected.

(e) An opportunity for the Regional Administrator to identify any discharge which has a total volume of less than 50,000 gallons on every day of the year as a discharge which is not a minor discharge. If the Regional Administrator so identifies a discharge and notifies the Director, the Director shall require the applicant for such discharge to submit additional NPDES application forms or any other information requested by the Regional Administrator in his notification to the Director.

(f) Procedures for the transmittal, if requested by the Regional Administrator, of copies of notice received by the Director from publicly owned treatment works pursuant to §§ 124.45 (d) and (e).

§ 124.24 Identity of Signatories to NPDES forms.

Any State or interstate program participating in the NPDES shall require that any NPDES form submitted to the Director be signed as follows:

(a) In the case of corporations, by a principal executive officer of at least the level of vice president, or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which the discharge described in the NPDES form originates.

(b) In the case of a partnership, by a general partner.

(c) In the case of a sole proprietorship, by the proprietor.

(d) In the case of a municipal, State, or other public facility, by either a principal executive officer, ranking elected official or other duly authorized employee.

Subpart D—Notice and Public Participation

(*Comment.* Section 101(e) of the Act provides that public participation shall be "provided for, encouraged, and assisted by the Administrator and the States." Section 402(b)(3) of the Act further calls upon State and interstate agencies participating in the NPDES "to insure that the public, and any other State the waters of which may be affected, receive notice of each application for a permit and to provide an opportunity for public hearing before a ruling on each such application." This subpart specifies certain procedures to be followed by all participating State and interstate agencies to insure national uniformity in the quality of public participation in NPDES permit determinations. Each State or interstate agency may devise additional procedures and means by which effective and constructive public participation may be enhanced.)

§ 124.31 Formulation of tentative determinations and draft NPDES permit.

(a) Any State or interstate agency participating in the NPDES shall formu-

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late and prepare tentative staff determinations with respect to a Refuse Act or NPDES application in advance of public notice of the proposed issuance or denial of an NPDES permit. Such tentative determinations shall include at least the following:

(1) A proposed determination to issue or deny an NPDES permit for the discharge described in the Refuse Act or NPDES application; and,

(2) If the determination proposed in paragraph (a) of this section is to issue the NPDES permit, the following additional tentative determinations:

(i) Proposed effluent limitations, identified pursuant to §§ 124.42 and 124.43, for those pollutants proposed to be limited;

(ii) A proposed schedule of compliance, including interim dates and requirements, for meeting the proposed effluent limitations, identified pursuant to § 124.44; and

(iii) A brief description of any other proposed special conditions (other than those required in § 124.45) which will have a significant impact upon the discharge described in the NPDES application.

(b) The Director shall organize the tentative determinations prepared pursuant to paragraph (a) of this section into a draft NPDES permit for the Refuse Act of NPDES application.

§ 124.32 Public notice.

(a) Public notice of every complete application for an NPDES permit shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed discharge and of the proposed determination to issue or deny an NPDES permit for the proposed discharge. Procedures for the circulation of public notice shall include at least the following:

(1) Notice shall be circulated within the geographical areas of the proposed discharge; such circulation may include any or all of the following:

(i) Posting in the post office and public places of the municipality nearest the premises of the applicant in which the effluent source is located;

(ii) Posting near the entrance to the applicant's premises and in nearby places; and

(iii) Publishing in local newspapers and periodicals, or, if appropriate, in a daily newspaper of general circulation;

(2) Notice shall be mailed to any person or group upon request; and

(3) The Director shall add the name of any person or group upon request to a mailing list to receive copies of notices for all NPDES applications within the State or within a certain geographical area.

(b) The Director shall provide a period of not less than thirty (30) days following the date of the public notice during which time interested persons may submit their written views on the tentative determinations with respect to the NPDES application. All written comments submitted during the 30-day comment period shall be retained by the Director and considered in the formulation of his final determinations with respect to the NPDES application. The period for comment may be extended at the discretion of the Director.

(c) The contents of public notice of applications for NPDES permits shall include at least the following (See Appendix A to this part for a sample public notice which meets the requirements of this section.):

(1) Name, address, phone number of agency issuing the public notice;

(2) Name and address of each applicant;

(3) Brief description of each applicant's activities or operations which result in the discharge described in the NPDES application (e.g., municipal waste treatment plant, steel manufacturing, drainage from mining activities);

(4) Name of waterway to which each discharge is made and a short description of the location of each discharge on the waterway indicating whether such discharge is a new or an existing discharge;

(5) A statement of the tentative determination to issue or deny an NPDES permit for the discharge described in the NPDES application;

(6) A brief description of the procedures for the formulation of final determinations, including the 30-day comment period required by paragraph (b) of this section and any other means by which interested persons may influence or comment upon those determinations; and

(7) Address and phone number of State or interstate agency premises at which interested persons may obtain further information, request a copy of the draft permit prepared pursuant to § 124.31(b), request a copy of the fact sheet described in § 124.33 and inspect and copy NPDES forms and related documents.

§ 124.33 Fact sheets.

(a) For every discharge which has a total volume of more than 500,000 gallons on any day of the year, the Director shall prepare and, following public notice, shall send, upon request to any person a fact sheet with respect to the application described in the public notice. The contents of such fact sheets shall include at least the following information (see Appendix B to this part for a sample fact sheet which meets the requirements of this section):

(1) A sketch or detailed description of the location of the discharge described in the NPDES application;

(2) A quantitative description of the discharge described in the NPDES application which includes at least the following:

(i) The rate or frequency of the proposed discharge; if the discharge is continuous, the average daily flow in gallons per day or million gallons per day;

(ii) For thermal discharges subject to limitation under the Act, the average summer and winter temperatures in degrees Fahrenheit; and

(iii) The average daily discharge in pounds per day of any pollutants which are present in significant quantities and which are subject to limitations or prohibition under sections 301, 302, 306, 307 of the Act and regulations published thereunder;

(3) The tentative determinations required under § 124.31;

(4) A brief citation, including a brief identification of the uses for which the receiving waters have been classified, of the water quality standards and effluent standards and limitations applied to the proposed discharge; and

(5) A fuller description of the procedures for the formulation of final determinations than that given in the public notice including:

(i) The 30-day comment period required by § 124.32(b);

(ii) Procedures for requesting a public hearing and the nature thereof; and

(iii) Any other procedures by which the public may participate in the formulation of the final determinations.

(b) The Director shall add the name of any person or group upon request to a mailing list to receive copies of fact sheets.

§ 124.34 Notice to other Government agencies.

Any State or interstate agency participating in the NPDES shall notify other appropriate Government agencies of each complete application for an NPDES permit and shall provide such agencies an opportunity to submit their written views and recommendations. Procedures for such notification shall include the following:

(a) At the time of issuance of public notice pursuant to § 124.32, transmission of a fact sheet to any other States whose waters may be affected by the issuance of an NPDES permit and, upon request, providing such States with a copy of the NPDES application and a copy of the proposed permit prepared pursuant to § 124.31(b). Each affected State shall be afforded an opportunity to submit written recommendations to the Director and to the Regional Administrator which the Director may incorporate into the permit if issued. Should the Director fail to incorporate any written recommendations thus received, he shall provide to the affected State or States (and to the Regional Administrator) a written explanation of his reasons for failing to accept any of the written recommendations.

(b) A procedure, similar to paragraph (a) of this section, for notifying any interstate agency having water quality control authority over waters which may be affected by the issuance of a permit.

(c) At the time of issuance of public notice pursuant to § 124.32, transmission of a fact sheet to the appropriate District Engineer of the Army Corps of Engineers of NPDES applications for discharges (other than minor discharges) into navigable waters:

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(1) The Director and the District Engineer for each Corps of Engineers district within the State or interested area may arrange for (i) notice to the District Engineer of minor discharges, (ii) waiver by the District Engineer of his right to receive fact sheets with respect to classes, types, and sizes within any category of point sources and with respect to discharges to particular navigable waters or parts thereof and (iii) any procedures for the transmission of forms, period for comment by the District Engineer (e.g., 30 days), and for objections of the District Engineer.

(2) A copy of any written agreement between the Director and a District Engineer shall be forwarded to the Regional Administrator and shall be made available to the public for inspection and copying.

(d) A procedure for mailing copies of public notice (or upon specific request, copies of fact sheets) for application for NPDES permits to any other Federal, State, or local agency, or any affected country, upon request, and providing such agencies an opportunity to respond, comment, or request a public hearing pursuant to § 124.36. Such agencies shall include at least the following:

(1) The agency responsible for the preparation of an approved plan pursuant to section 208(b) of the Act; and

(2) The State or interstate agency responsible for the preparation of a plan pursuant to an approved continuous planning process under section 303(e) of the Act, unless such agency is under the supervision of the Director.

(e) Procedures for notice to and coordination with appropriate public health agencies for the purpose of assisting the applicant in coordinating the applicable requirements of the Act with any applicable requirements of such public health agencies.

§ 124.35 Public access to information.

(a) Any State or interstate agency participating in the NPDES shall insure that any NPDES forms (including the draft NPDES permit prepared pursuant to § 124.31(b)) or any public comment upon those forms pursuant to § 124.32(b) shall be available to the public for inspection and copying. The Director, in his discretion, may also make available to the public any other records, reports, plans, or information obtained by the State or interstate agency pursuant to its participation in the NPDES.

(b) The Director shall protect any information (other than effluent data) contained in such NPDES form, or other records, reports, or plans as confidential upon a showing by any person that such information if made public would divulge methods of processes entitled to protection as trade secrets of such person. If, however, the information being considered for confidential treatment is contained in an NPDES form, the Director shall forward such information to the Regional Administrator for his concurrence in any determination of confidentiality. If the Regional Administrator does not agree that some or all of the information being considered for confidential treatment merits such protection, he shall request advice from the Office of General Counsel, stating the reasons for his disagreement with the determination of the Director. The Regional Administrator shall simultaneously provide a copy of such request to the person claiming trade secrecy. The General Counsel shall determine whether the information in question would, if revealed, divulge methods of processes entitled to protection as trade secrets. In making such determinations, he shall consider any additional information submitted to the Office of General Counsel within 30 days of receipt of the request from the Regional Administrator. If the General Counsel determines that the information being considered does not contain trade secrets, he shall so advise the Regional Administrator and shall notify the person claiming trade secrecy of such determination by certified mail. No sooner than 30 days following the mailing of such notice, the Regional Administrator shall communicate to the Director his decision not to concur in the withholding of such information, and the Director and the Regional Administrator shall then make available to the public, upon request, that information determined not to constitute trade secrets.

(c) Any information accorded confidential status, whether or not contained in an NPDES form, shall be disclosed, upon request, to the Regional Administrator, or his authorized representative, who shall maintain the disclosed information as confidential.

(d) The Director shall provide facilities for the inspection of information relating to NPDES forms and shall insure that State employees honor requests for such inspection promptly without undue requirements or restrictions. The Director shall either (1) insure that a machine or device for the copying of papers and documents is available for a reasonable fee, or (2) otherwise provide for or coordinate with copying facilities or services such that requests for copies of nonconfidential documents may be honored promptly.

(*Comment.* Although not required herein, the Director is encouraged to maintain facilities for inspection and copying in more than one location within the State or interstate area in order to increase citizen access to NPDES forms and activities.)

§ 124.36 Public hearings.

The Director shall provide an opportunity for the applicant, any affected State, any affected interstate agency, any affected country, the Regional Administrator, or any interested agency, person, or group of persons to request or petition for a public hearing with respect to NPDES applications. Any such request or petition for public hearing shall be filed within the 30-day period prescribed in § 124.32(b) and shall indicate the interest of the party filing such request and the reasons why a hearing is warranted. The Director shall hold a hearing if there is a significant public interest (including the filing of requests or petitions for such hearing) in holding such a hearing. Instances of doubt should be resolved in favor of holding the hearing. Any hearing brought pursuant to this subsection shall be held in the geographical area of the proposed discharge or other appropriate area, in the discretion of the Director, and may, as appropriate, consider related groups of permit applications.

§ 124.37 Public notice of public hearings.

(a) Public notice of any hearing held pursuant to § 124.36 above shall be circulated at least as widely as was the notice of the NPDES application. Procedures for the circulation of public notice for hearings held under § 124.36 shall include at least the following:

(1) Notice shall be published in at least one newspaper of general circulation within the geographical area of the discharge;

(2) Notice shall be sent to all persons and Government agencies which received a copy of the notice or the fact sheet for the NPDES application;

(3) Notice shall be mailed to any person or group upon request; and

(4) Notice shall be effected pursuant to subparagraphs (1) and (3) of this paragraph at least thirty (30) days in advance of the hearing.

(b) The contents of public notice of any hearing held pursuant to § 124.36 shall include at least the following (see Appendix C to this part for a sample hearing) notice which meets the requirements of this section:

(1) Name, address, and phone number of agency holding the public hearing;

(2) Name and address of each applicant whose application will be considered at the hearing;

(3) Name of waterway to which each discharge is made and a short description of the location of each discharge on the waterway;

(4) A brief reference to the public notice issued for each NPDES application, including identification number and date of issuance;

(5) Information regarding the time and location for the hearing;

(6) The purpose of the hearing;

(7) A concise statement of the issues raised by the persons requesting the hearing;

(8) Address and phone number of premises at which interested persons may obtain further information, request a copy of each draft NPDES permit prepared pursuant to § 124.31(b) above, request a copy of each fact sheet prepared pursuant to § 124.33, and inspect and copy NPDES forms and related documents; and,

(9) A brief description of the nature of the hearing, including the rules and procedures to be followed.

Subpart E—Terms and Conditions of NPDES Permits

§ 124.41 Prohibited discharges.

Any State or interstate agency participating in the NPDES shall insure that no permit shall be issued authorizing any of the following discharges:

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(a) The discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste into navigable waters;

(b) Any discharge which the Secretary of the Army acting through the chief of engineers finds would substantially impair anchorage and navigation;

(c) Any discharge to which the Regional Administrator has objected in writing pursuant to any right to object provided the Administrator in section 402(d) of the Act; and

(d) Any discharge from a point source which is in conflict with a plan or amendment thereto approved pursuant to section 208(b) of the Act.

§ 124.42 Application of effluent standards and limitations, water quality standards, and other requirements.

(a) Procedures for any State or interstate program participating in the NPDES must insure that the terms and conditions of each issued NPDES permit apply and insure compliance with all of the following, whenever applicable:

(1) Effluent limitations under sections 301 and 302 of the Act;

(2) Standards of performance for new sources under section 306 of the Act;

(3) Effluent standards, effluent prohibitions, and pretreatment standards under section 307 of the Act;

(4) Any more stringent limitation, including those (i) necessary to meet water quality standards, treatment standards, or schedules of compliance, established pursuant to any State law or regulation (under authority preserved by section 510), or (ii) necessary to meet any other Federal law or regulation, or (iii) required to implement any applicable water quality standards; such limitations to include any legally applicable requirements necessary to implement total maximum daily loads established pursuant to section 303(d) and incorporated in the continuing planning process approved under section 303(e) of the Act and any regulations and guidelines issued pursuant thereto;

(5) Any more stringent legally applicable requirements necessary to comply with a plan approved pursuant to section 208(b) of the Act; and

(6) Prior to promulgation by the Administrator of applicable effluent standards and limitations pursuant to sections 301, 302, 306, and 307, such conditions as the Director determines are necessary to carry out the provisions of the Act.

(7) If the NPDES permit is for the discharge of pollutants into the navigable waters from a vessel or other floating craft, any applicable regulations promulgated by the Secretary of the department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, storage, and stowage of pollutants.

(b) In any case where an issued NPDES permit applies the effluent standards and limitations described in subparagraphs (1), (2), and (3) of paragraph (a) of this section, the Director must state that the discharge authorized by the permit will not violate applicable water quality standards and must have prepared some explicit verification of that statement. In any case where an issued NPDES permit applies any more stringent effluent limitation based upon applicable water quality standards, a waste load allocation must be prepared to ensure that the discharge authorized by the permit is consistent with applicable water quality standards.

§ 124.43 Effluent limitations in issued NPDES permits.

In the application of effluent standards and limitations, water quality standards, and other legally applicable requirements, pursuant to § 124.42, any State or interstate agency participating in the NPDES shall, for each issued NPDES permit, specify average and maximum daily quantitative limitations for the level of pollutants in the authorized discharge in terms of weight (except pH, temperature, radiation, and any other pollutants not appropriately expressed by weight). The Director may, in his discretion, in addition to the specification of daily quantitative limitations by weight, specify other limitations, such as average or maximum concentration limits, for

(*Comment.* The manner in which effluent limitations are expressed will depend upon the nature of the discharge. Continuous discharges shall be limited by daily loading figures and, where appropriate, may be limited as to concentration or discharge rate (e.g., for toxic or highly variable continuous discharges). Batch discharges should be more particularly described and limited in terms of (i) frequency (e.g., to occur not more than once every 3 weeks), (ii) total weight (e.g., not to exceed 300 pounds per batch discharge), (iii) maximum rate of discharge of pollutants during the batch discharge (e.g., not to exceed 2 pounds per minute), and (iv) prohibition or limitation by weight, concentration, or other appropriate measure of specified pollutants (e.g., shall not contain at any time more than 0.1 p.p.m. zinc or more than one-fourth (¼) pound of zinc in any batch discharge). Other intermittent discharges such as recirculation blowdown should be particularly limited to comply with any applicable water quality standards and effluent standards and limitations.)

§ 124.44 Schedules of compliance in issued NPDES permits.

In addition to the application of the effluent standards and limitations, water quality standards, and other legally applicable requirements, pursuant to § 124.42, any State or interstate agency participating in the NPDES shall follow the following procedures in setting schedules in NPDES permit conditions to achieve compliance with applicable effluent standards and limitations, water quality standards, and other legally applicable requirements:

(a) With respect to any discharge which is not in compliance with applicable effluent standards and limitations, applicable water quality standards, or other legally applicable requirements listed in § 124.42 (d) and (e), the permittee shall be required to take specific steps to achieve compliance with the following:

(1) In accordance with any legally applicable schedule of compliance contained in:

(i) Applicable effluent standards a limitations;

(ii) If more stringent, water qual standards; or,

(iii) If more stringent, legally cable requirements listed in § 124. and (e); or,

(2) In the absence of any legall plicable schedule of compliance, i shortest, reasonable period of time, period to be consistent with the g lines and requirements of the Act.

(b) In any case where the perio time for compliance specified in p graph (a) of this section exceed months, a schedule of compliance sha specified in the permit which will forth interim requirements and the d for their achievement; in no event more than 9 months elapse bet interim dates. If the time necessary completion of the interim require (such as the construction of a treat facility) is more than 9 months a not readily divided into stages for pletion, interim dates shall be spec for the submission of reports of pro towards completion of the interim quirement. For each NPDES pe schedule of compliance, interim d and the final date for compliance s to the extent practicable, fall on the day of the months of March, June, tember, and December.

(*Comment.* Certain interim requirem such as the submission of preliminary or plans often require less than 9 months thus a shorter interval should be spec Other requirements such as the construc of treatment facilities may require se years for completion and may not re subdivide into 9-month intervals. Long- interim requirements should nonethele subdivided into intervals not longer th months at which the permittee is requ to report his progress to the Director pu ant to § 124.44(c)).

(c) Either before or up to fourteen days following each interim date and final date of compliance the permi shall provide the Director with writ notice of the permittee's compliance noncompliance with the interim or f requirement.

(d) On the last day of the months February, May, August, and Novem the Director shall transmit to the R gional Administrator a list of all stances, as of 30 days prior to the d of such report, of failure or refusal a permittee to comply with an interim final requirement or to notify the Dir tor of compliance or noncompliance w each interim or final requirement (as quired pursuant to paragraph (b) of t section. Such list shall be available the public for inspection and copying shall contain at least the following inf mation with respect to each instance noncompliance:

(1) Name and address of each n complying permittee;

(2) A short description of each stance of noncompliance (e.g., failur submit preliminary plans, 2 week d in commencement of construction treatment facility; failure to notify rector of compliance with interim

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quirement to complete construction by June 30th, etc.);

(3) A short description of any actions or proposed actions by the permittee or the Director to comply or enforce compliance with the interim or final requirement; and

(4) Any details which tend to explain or mitigate an instance of noncompliance with an interim or final requirement (e.g., construction delayed due to materials shortage, plan approval delayed by objections from State Fish and Wildlife Agency.

(e) If a permittee fails or refuses to comply with an interim or final requirement in an NPDES permit such noncompliance shall constitute a violation of the permit for which the Director may, pursuant to Subpart H of this part, modify, suspend or revoke the permit or take direct enforcement action.

§ 124.45 Other terms and conditions of issued NPDES permits.

In addition to the requirements of §§ 124.42, 124.43, and 124.44, procedures of any State or interstate agency participating in the NPDES must insure that the terms and conditions of each issued NPDES permit provide for and insure the following:

(a) That all discharges authorized by the NPDES permit shall be consistent with the terms and conditions of the permit; that facility expansions, production increases, or process modifications which result in new or increased discharges of pollutants must be reported by submission of a new NPDES application or, if such discharge does not violate effluent limitations specified in the NPDES permit, by submission to the Director of notice of such new or increased discharges of pollutants; that the discharge of any pollutant more frequently than or at a level in excess of that identified and authorized by the permit shall constitute a violation of the terms and conditions of the permit;

(b) That the permit may be modified, suspended, or revoked in whole or in part during its term for cause including, but not limited to, the following:

(1) Violation of any terms or conditions of the permit;

(2) Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts; and,

(3) A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge;

(c) That the permittee shall permit the Director or his authorized representative, upon the presentation of his credentials:

(1) To enter upon permittee's premises in which an effluent source is located or in which any records are required to be kept under terms and conditions of the permit;

(2) To have access to and copy any records required to be kept under terms and conditions of the permit;

(3) To inspect any monitoring equipment or method required in the permit; or,

(4) To sample any discharge of pollutants.

(d) That, if the permit is for a discharge from a publicly owned treatment works, the permittee shall provide notice to the Director of the following:

(1) Any new introduction of pollutants into such treatment works from a source which would be a new source as defined in section 306 of the Act if such source were discharging pollutants;

(2) Except as to such categories and classes of point sources or discharges specified by the Director, any new introduction of pollutants into such treatment works from a source which would be subject to section 301 of the Act if such source were discharging pollutants; and,

(3) Any substantial change in volume or character of pollutants being introduced into such treatment works by a source introducing pollutants into such works at the time of issuance of the permit.

Such notice shall include information on (i) the quality and quantity of effluent to be introduced into such treatment works and (ii) any anticipated impact of such change in the quantity or quality of effluent to be discharged from such publicly owned treatment works.

(e) That, if the permit is for a discharge from a publicly owned treatment works, the permittee shall require any industrial user of such treatment works to comply with the requirements of sections 204(b), 307, and 308 of the Act. As a means of insuring such compliance, the permittee shall require of each industrial user subject to the requirements of section 307 of the Act and shall forward a copy to the Director periodic notice (over intervals not to exceed 9 months) of progress towards full compliance with section 307 requirements.

(f) That the permittee at all times shall maintain in good working order and operate as efficiently as possible any facilities or systems of control installed by the permittee to achieve compliance with the terms and conditions of the permit.

(g) That if a toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under section 307(a) of the Act for a toxic pollutant which is present in the permittee's discharge and such standard or prohibition is more stringent than any limitation upon such pollutant in the NPDES permit, the Director shall revise or modify the permit in accordance with the toxic effluent standard or prohibition and so notify the permittee.

§ 124.46 Transmission to Regional Administrator of proposed NPDES permits.

Any State or interstate agency participating in the NPDES shall transmit to the Regional Administrator copies of NPDES permits proposed to be issued by such agency in such manner as the Director and Regional Administrator shall agree upon. Any agreement between the State or interstate agency and the Regional Administrator shall provide for at least the following:

(a) Except as waived pursuant to paragraph (d) of this section, the transmission by the Director of any and all terms, conditions, requirements, or documents which are a part of the proposed permit or which affect the authorization by the proposed permit of the discharge of pollutants;

(b) A period of time (up to 90 days) in which the Regional Administrator, pursuant to any right to object provided in section 402(d)(2) of the Act, may comment upon, object to, or make recommendations with respect to the proposed permit;

(c) Procedures for State acceptance or rejection of a written objection by the Regional Administrator; and

(d) Any written waiver by the Regional Administrator of his rights to receive, review, object to, or comment upon proposed NPDES permits for classes, types, or sizes within any category of point sources.

§ 124.47 Transmission to Regional Administrator of issued NPDES permits.

Each State or interstate agency participating in the NPDES shall transmit to the Regional Administrator a copy of every issued NPDES permit, immediately following issuance, along with any and all terms, conditions, requirements, or documents which are a part of such permit or which affect the authorization by the permit of the discharge of pollutants.

Subpart F—Duration and Review of NPDES Permits

§ 124.51 Duration of issued NPDES permits.

Any State or interstate agency participating in the NPDES shall provide that each issued NPDES permit shall have a fixed term not to exceed 5 years.

(*Comment.* The term of an NPDES permit may extend beyond the time for compliance specified pursuant to § 124.44. The time for compliance shall be that dictated by (i) effluent standards and limitations, or (ii) if more stringent, water quality standards, or (iii) if more stringent, other legally applicable requirements such as those listed in § 124.42 (d) and (e). The term of the NPDES permit may extend beyond the final deadline for compliance, except that the term may not exceed 5 years. Failure to comply with the permit schedule of compliance, including interim and final requirements, as provided in §124.44(e), is a violation of the permit for which the Director may take Subpart H of this part enforcement action.)

§ 124.52 Reissuance of NPDES permits.

(a) Any State or interstate agency participating in the NPDES shall maintain procedures for the review of applications for reissuance of NPDES permits. Such review procedures shall require, and the Director shall so notify the permittee, that any permittee who wishes to continue to discharge after the expiration date of his NPDES permit must file for reissuance of his permit at least 180 days prior to its expiration. The filing requirements for reissuance shall

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be determined by the State or interstate agency and may range from a simple written request for reissuance to submission of all NPDES and State or interstate forms.

(b) The scope and manner of any review of an application for reissuance of an NPDES permit shall be within the discretion of the State or interstate agency but shall be sufficiently detailed as to insure the following:

(1) That the permittee is in compliance with or has substantially complied with all the terms, conditions, requirements, and schedules of compliance of the expired NPDES permit;

(2) That the Director has up-to-date information on the permittee's production levels, permittee's waste treatment practices, nature, contents, and frequency of permittee's discharge, either pursuant to the submission of new forms and applications or pursuant to monitoring records and reports submitted to the Director by the permittee; and,

(3) That the discharge is consistent with applicable effluent standards and limitations, water quality standards, and other legally applicable requirements listed in § 124.42, including any additions to, or revisions or modifications of such effluent standards and limitations, water quality standards, or other legally applicable requirements during the term of the permit.

(c) The State or interstate agency shall follow the notice and public participation procedures specified in Subpart D of this part in connection with each request for reissuance of an NPDES permit.

(d) Notwithstanding any other provision in this part, any point source the construction of which is commenced after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 and which is so constructed as to meet all applicable standards of performance shall not be subject to any more stringent standard of performance during a 10-year period beginning on the date of completion of such construction or during the period of depreciation or amortization of such facility for the purposes of section 167 or 169 (or both) of the Internal Revenue Code of 1954, whichever period ends first.

Subpart G—Monitoring, Recording, and Reporting

§ 124.61 Monitoring.

Procedures of any State or interstate agency participating in the NPDES for the monitoring of any discharge authorized by an NPDES permit shall be consistent with the following:

(a) Any discharge authorized by an NPDES permit may be subject to such monitoring requirements as may be reasonably required by the Director, including the installation, use, and maintenance of monitoring equipment or methods (including, where appropriate, biological monitoring methods).

(b) Any discharge authorized by an NPDES permit which (1) is not a minor discharge, (2) the Regional Administrator requests, in writing, be monitored, or (3) contains toxic pollutants for which an effluent standard has been established by the Administrator pursuant to section 307(a) of the Act, shall be monitored by the permittee for at least the following:

(i) Flow (in gallons per day); and,

(ii) All of the following pollutants:

(a) Pollutants (either directly or indirectly through the use of accepted correlation coefficients or equivalent measurements) which are subject to reduction or elimination under the terms and conditions of the permit;

(b) Pollutants which the Director finds, on the basis of information available to him, could have a significant impact on the quality of navigable waters;

(c) Pollutants specified by the Administrator, in regulations issued pursuant to the Act, as subject to monitoring; and,

(d) Any pollutants in addition to the above which the Regional Administrator requests, in writing, be monitored.

(c) Each effluent flow or pollutant required to be monitored pursuant to paragraph (b) of this section shall be monitored at intervals sufficiently frequent to yield data which reasonably characterizes the nature of the discharge of the monitored effluent flow or pollutant. Variable effluent flows and pollutant levels may be monitored at more frequent intervals than relatively constant effluent flows and pollutant levels which may be monitored at less frequent intervals.

§ 124.62 Recording of monitoring activities and results.

Any State or interstate agency participating in the NPDES shall specify the following recording requirements for any NPDES permit which requires monitoring of the authorized discharge:

(a) The permittee shall maintain records of all information resulting from any monitoring activities required of him in his NPDES permit;

(b) Any records of monitoring activities and results shall include for all samples: (1) The date, exact place, and time of sampling; (2) the dates analyses were performed; (3) who performed the analyses; (4) the analytical techniques/methods used; and, (5) the results of such analyses; and,

(c) The permittee shall be required to retain for a minimum of 3 years any records of monitoring activities and results including all original strip chart recording for continuous monitoring instrumentation and calibration and maintenance records. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the permittee or when requested by the Director or Regional Administrator.

§ 124.63 Reporting of monitoring results.

Any State or interstate agency participating in the NPDES shall require periodic reporting (at a frequency of not less than once per year) on the proper NPDES reporting form of monitoring results obtained by a permittee pursuant to monitoring requirements in an NPDES permit. In addition to the NPDES reporting form, the Director in his discretion may require submission of such other reports as he determines to be necessary. information regarding monitoring

(*Comment.* Reporting frequency, as monitoring frequency, depends upon the ture and impact of the discharge. An report submission is sufficient for small ing water discharges. Discharges for wh more frequent, even monthly, reporting desirable include variable discharges, ma including municipal, discharges, and charges for which new treatment or con methods are being applied. Reporting f quency should correspond with administ tive capability to evaluate the reports they come in.)

§ 124.64 NPDES monitoring, recordi and reporting requirements.

Any State or interstate agency partic pating in the NPDES shall adopt proc dures consistent with any national mon toring, recording, and reporting requir ments specified by the Administrator regulations issued pursuant to the Ac

Subpart H—Enforcement Provisions

§ 124.71 Receipt and followup of n tifications and reports.

(a) Any State or interstate agency participating in the NPDES shall hav the procedures and the capability for th receipt, evaluation, and investigatory followup for possible enforcement or remedial action of all notices and report required of permittees including, but no limited to, the following:

(1) Reports from industrial users of progress towards compliance with the requirements of section 307 of the Act, submitted pursuant to § 124.45(e);

(2) Notifications (or failure to notify) from permittees of compliance or non-compliance with interim requirements specified in NPDES permit schedules of compliance pursuant to § 124.44; and,

(3) Data submitted by permittees in NPDES reporting forms and other forms supplying monitoring data, pursuant to Subpart G of this part.

(b) Any such reports or notifications received by the Director pursuant to paragraph (a) of this section shall: (1) Constitute information available to the Director and (2) if forwarded to the Regional Administrator pursuant to the provisions of this part shall constitute information available to the Administrator within the meaning of section 309 of the Act.

(c) Any State or interstate agency participating in the NPDES shall have procedures and capability similar to paragraph (a) of this section for the receipt and evaluation of notices (relating to new introductions or changes in the volume or character of pollutants introduced into publicly owned treatment works) submitted by permittees which are publicly owned treatment works, pursuant to § 124.45(d), for possible violation of the terms and conditions of the NPDES permit. If the Director determines that any condition of the permit is violated, he shall notify the Regional Administrator and consider taking action under section 402(h) of the Act (relating to proceedings to re-

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strict or prohibit the introduction of pollutants into treatment works).

§ 124.72 Modification, suspension, and revocation of NPDES permits.

(a) Any State or interstate agency participating in the NPDES shall provide procedures which insure that, after notice and opportunity for a public hearing, any permit issued under the NPDES can be modified, suspended, or revoked in whole or in part during its term for cause including, but not limited to, the causes listed in § 124.45(b) or for failure or refusal of the permittee to carry out the requirements of § 124.45(c).

(b) The Director may, upon request of the applicant, revise or modify a schedule of compliance in an issued NPDES permit if he determines good and valid cause (such as an Act of God, strike, flood, materials shortage, or other event over which the permittee has little or no control) exists for such revision and if within 30 days following receipt of notice from the Director, the Regional Administrator does not object in writing. All revisions or modifications made pursuant to this subsection during the period ending 30 days prior to the date of transmission of such list, shall be included in the list prepared by the Director pursuant to § 124.44(d).

§ 124.73 Enforcement.

Any State or interstate agency participating in the NPDES shall have such powers and procedures and such recourse to criminal, civil, and civil injunctive remedies as to insure the following ways and means are available to protect, maintain, and enhance water quality:

(a) Procedures which enable the Director to require compliance with (1) any effluent standards and limitations or water quality standards, (2) any NPDES permit or term or condition thereof, (3) any NPDES filing requirements, (4) any duty to permit or carry out inspection, entry, or monitoring activities, or (5) any rules or regulations issued by the Director either pursuant to orders issued by the Director, court actions, or both;

(b) Procedures which enable the Director to immediately and effectively halt or eliminate any imminent or substantial endangerments to the health or welfare of persons resulting from the discharge of pollutants (1) by an order or suit in the appropriate State court to immediately restrain any person causing or contributing to the discharge of pollutants or to take such other action as may be necessary, or (2) by a procedure for the immediate telephonic notice to the Regional Administrator of any actual or threatened endangerments to the health or welfare of persons resulting from the discharge of pollutants;

(c) Procedures which enable the Director to sue in courts of competent jurisdiction to enjoin any threatened or continuing violations of any NPDES permits or conditions thereof without the necessity of a prior revocation of the permit;

(d) Procedures which enable the Director to enter any premises in which an effluent source is located or in which records are required to be kept under terms or conditions of a permit and otherwise be able to investigate, inspect, or monitor any suspected violations of water quality standards or effluent standards and limitations or of NPDES permits or terms or conditions thereof;

(e) Procedures which enable the Director to assess or to sue to recover in court, such civil fines, penalties, and other civil relief as may be appropriate for the violation by any person of (1) any effluent standards and limitations or water quality standards, (2) any NPDES permit or term or condition thereof, (3) any NPDES filing requirements, (4) any duty to permit or carry out inspection, entry, or monitoring activities, (5) any order issued by the Director under paragraph (a) of this section, or (6) any rules, regulations, or orders issued by the Director;

(f) Procedures which enable the Director to seek criminal fines for the willful or negligent violation by such persons of (1) any effluent standards and limitations or water quality standards, (2) any NPDES permit or term or condition thereof, (3) any NPDES filing requirements;

(g) Procedures which enable the Director to seek criminal fines against any person who knowingly makes any false statement, representation, or certification in any NPDES form or any notice or report required by the term and conditions of any issued NPDES permit or knowingly renders inaccurate any monitoring device or method required to be maintained by the Director; and

(h) The maximum civil penalties and criminal fines recoverable by the Director pursuant to paragraphs (e) and (f) of this section shall (1) be comparable to similar maximum amounts recoverable by the Regional Administrator under section 309 or (2) represent an actual and substantial economic deterrent to the actions for which they are assessed or levied. Such civil penalties or criminal fines shall be assessable up to the maximum amounts for each violation specified in paragraphs (e) and (f) of this section, or, if the violation is a continuous discharge, assessable for each day the discharge occurs.

(*Comment.* It is understood that in many States the Director will be represented in State courts by the State attorney general or other appropriate legal officer. While the Director need not appear in court actions under this subpart, he should have the power to request that such actions be brought.

The following enforcement options, while not mandatory, are highly recommended as means not only for compelling compliance but also for providing additional funds to State or interstate program efforts:

(1) Procedures for assessment by the Director or by a State court of any violator for the costs of an investigation, inspection, or monitoring survey which led to the establishment of the violation;

(2) Procedures which enable the Director to assess or to sue any persons responsible for an unauthorized discharge of pollutants for any expenses incurred by the State in removing, correcting, or terminating any adverse effects upon water quality resulting from such unauthorized discharge of pollutants, whether or not accidental; and,

(3) Procedures which enable the Director to sue for compensation for any loss or destruction of wildlife, fish or aquatic life, and for any other actual damages caused by an unauthorized discharge of pollutants, either for the State, for any residents of the State who are directly aggrieved by the unauthorized discharge of pollutants, or both.)

Subpart I—Disposal of Pollutants into Wells

§ 124.80 Control of disposal of pollutants into wells.

Any State or interstate agency participating in the NPDES shall have procedures which control the disposal of pollutants into wells. Any such disposal shall be sufficiently controlled to protect the public health and welfare and to prevent pollution of ground and surface water resources.

(a) If an applicant for an NPDES permit proposes to dispose of pollutants into wells as part of a program to meet the proposed terms and conditions of an NPDES permit, the Director shall specify additional terms and conditions in the final NPDES permit which shall (1) prohibit the proposed disposal, or (2) control the proposed disposal in order to prevent pollution of ground and surface water resources and to protect the public health and welfare.

(b) A State agency participating in the NPDES shall have procedures to prohibit or control through the issuance of permits all other proposed disposals of pollutants into wells. Following approval of the Administrator of a State program pursuant to section 402 of the Act, the Director shall permit no uncontrolled disposals of pollutants into wells within the State.

(c) Any permit issued for the disposal of pollutants into wells shall be issued in accordance with the procedures and requirements specified in this part.

(d) The Regional Administrator shall distribute to the Director and shall utilize in his review of any permits proposed to be issued by the Director for the disposal of pollutants into wells, any policies, technical information, or requirements specified by the Administrator in regulations issued pursuant to the Act or in directives issued to EPA regional offices.

Subpart J—Resources, Planning and Other Requirements

§ 124.91 Availability of resources.

(a) Any State or interstate agency participating in the NPDES shall, in submitting its program description pursuant to section 402(b) of the Act, provide information regarding funding and manpower appropriated for the use of the program proposed to be established and administered under State law or under an interstate compact. Such information shall include the following:

(1) A description of all full-time and part-time employees who will be engaged in carrying out the State permit program, including information on the qualifications and functions of such employees.

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(2) A list of the proposed costs and expenses of establishing and administering the program described in the program description, including (i) wages and salaries of the personnel listed in (1) above, (ii) cost of administrative support (such as office space and supplies, computer time, vehicles, notice and hearing procedures, etc), and (iii) cost of technical support (such as laboratory space and supplies, vehicles, watercraft, etc.). Such estimate of costs and expenses shall include the cost and expense of carrying out the procedures and requirements contained in this part;

(3) A description of the funding available to the Director to meet the costs and expenses listed in subparagraph (2) of this paragraph including any restrictions or limitations upon such funding; and

(4) A list of categories and sizes of all point sources (e.g., major industrial, minor industrial, minor municipal, major feedlot, irrigation return flow, shopping centers and subdivisions, etc.) to which the Director proposes to issue permits under the Act. For each category, the following information shall be given:

(i) Estimated numbers of point sources within such category which are required to file for an NPDES permit; and

(ii) Number and percent of point sources within each category for which the State has already issued a State permit or equivalent document regulating the discharge of pollutants.

(b) The Regional Administrator and the Administrator shall review the information submitted by the Director pursuant to paragraph (a) of this section in order to determine whether the Director has resources available to him which will enable him to carry out the program described in the program description submitted pursuant to section 402(b) and the procedures contained in this part. Such a determination shall be based upon an examination of criteria which shall include the following:

(1) Whether there are a sufficient number of employees to process NPDES applications and issue NPDES permits in sufficient time to allow permittees to attain effluent limitations which will achieve the July 1, 1977 goal specified in section 301(b) of the Act;

(2) Whether the employees of the Director have sufficient expertise and experience for the proper specification of terms and conditions of NPDES permits pursuant to the requirements of subpart E of this part;

(3) Whether the employees of the Director have sufficient administrative and technical support and resources, including funding, to enable the Director to carry out his duties under this part and section 402 of the Act;

(4) The number, location, and kinds of point sources which constitute major sources of discharge of pollutants within the State or interstate area; and

(5) The quality of navigable waters within the State or subject to the authority of the interstate agency.

§ 124.92 Inspection and surveillance support for NPDES permits.

Any State or interstate agency participating in the NPDES shall have the funding, qualified personnel, and other resources necessary to support NPDES permits with inspection and surveillance procedures which will determine, independent of information supplied by applicants and permittees, compliance or noncompliance with applicable effluent standards and limitations, water quality standards, NPDES filing requirements, and issued NPDES permits or terms or conditions thereof. Such surveillance and inspection support procedures shall include the following:

(a) A supporting survey program with sufficient capability to make systematic, on-the-spot, comprehensive surveys of all waters subject to the Director's authority in order to identify and locate all point sources subject to NPDES filing requirements. Any compilation, index, or inventory of point sources shall be made available to the Regional Administrator or his authorized representative upon request;

(b) A supporting inspection program for the periodic inspection (to be performed not less than once every year for every discharge which is not a minor discharge) of discharges of pollutants from point sources and facilities for the treatment and control of such discharges of pollutants. Such inspections shall determine compliance or noncompliance with issued NPDES permits or terms or conditions thereof and, in particular, compliance or noncompliance with specific effluent limitations and schedules of compliance in such NPDES permits;

(c) A supporting surveillance program with sufficient capability for the random sampling and analysis of discharges for the purpose of identifying occasional and continuing violations of permit conditions or terms or conditions thereof and the accuracy of information submitted by permittees in NPDES reporting forms and other forms supplying monitoring data; and

(d) A supporting program for the purpose of following up evidence of violations of applicable effluent standards and limitations and water quality standards, NPDES filing requirements, or issued NPDES permits or terms or conditions thereof indicated by reports and notifications evaluated pursuant to § 124.71 above or by survey, inspection, and surveillance activities in paragraphs (a)–(c) of this section. The taking of samples and other information shall be performed with sufficient care as to produce evidence admissible in an enforcement proceeding or in court should the follow-up indicate a violation of applicable effluent standards and limitations and water quality standards or issued NPDES permits or terms or conditions thereof.

§ 124.93 Continuing planning process.

Any State or interstate program participating in the NPDES must have an approved continuing planning process pursuant to section 303(e) of the Act and must assure that its approved planning process is at all times consistent w the Act.

§ 124.94 Agency Board membership.

Each State or interstate agency p ticipating in the NPDES shall insure t any board or body which appro NPDES permit applications or porti thereof shall not include as a memb any person who receives, or has dur the previous 2 years received, a signi cant portion of his income directly indirectly from permit holders or ap cants for a permit.

(a) For the purposes of this secti the term "board or body" includes a individual, including the Director, w has or shares authority to approve perm applications or portions thereof either the first instance or on appeal.

(b) For the purposes of this secti the term "significant portion of his come" shall mean 10 percent of gro personal income for a calendar ye except that it shall mean 50 percent gross personal income for a calendar ye if the recipient is over 60 years of a and is receiving such portion pursuant retirement, pension, or similar arrang ment.

(c) For the purposes of this sectio the term "permit holders or applican for a permit" shall not include any d partment or agency of a State govern ment, such as a Department of Parks a Department of Fish and Wildlife.

(d) For the purposes of this sectio the term "income" includes retiremen benefits, consultant fees, and stock div dends.

(e) For the purposes of this sectio income is not received "directly or in directly from permit holders or appli cants for a permit" where it is derive from mutual-fund payments, or fro other diversified investments over whic the recipient does not know the identit of the primary sources of income.

Subpart K—NPDES Application and Reporting Forms [Reserved]

(Reserved for NPDES application and re porting forms, along with guidelines and in structions for their use by applicants fo NPDES permits and by State and interstat programs participating in the NPDES.)

APPENDIX A

SAMPLE PUBLIC NOTICE

DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATER QUALITY AND RESOURCES
1616 COURT HOUSE DRIVE, CAPITAL CITY, STATE
(ZIP) 307-445-8922

[Public Notice No. OPP-72-301; Application No. CIY-400-60-301]

AUGUST 12, 1973.

NOTICE—APPLICATION FOR NPDES PERMIT TO DISCHARGE TO STATE WATERS

Acme Paper Products, Inc., 11345 North Fremont Street, Cape Rockaway, State (ZIP), has applied for a Department of Environmental Protection permit to discharge pollutants into State waters.

Applicant is a manufacturer of bleached grades of paper from kraft pulp. Two existing discharges are described in the application: One of the utility waste water from applicant's steam generating plant and the other of process wastes from the manufactur of pulp and paper. Both discharges are pres

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ently to Martin Creek one-half-mile upstream from Whitehall Bay.

On the basis of preliminary staff review and application of lawful standards and regulations, the *Division of Water Quality and Resources* proposes to issue a permit to discharge subject to certain effluent limitations and special conditions. These proposed determinations are tentative. Persons wishing to comment upon or object to the proposed determinations are invited to submit same in writing to the above address no later than *September 12, 1973*. All comments or objections received prior to September 12, 1973, will be considered in the formulation of final determinations regarding the application. *If no objections* are received, the Director will issue his final determinations within 60 days of the date of this notice. A public hearing may be held if response to this notice indicates significant public interest.

The application, proposed permit including proposed effluent limitations and special conditions, fact sheets, comments received, and other information is on file and may be inspected and copied in Room 814, 1616 Court House Drive, Capital City, State (ZIP), at any time between 8:15 a.m. and 4:45 p.m., Monday through Friday. Fact sheets and further information may be obtained by writing to the above address or by calling the Office of Permit Processing at 307—445-8922.

APPENDIX B

SAMPLE FACT SHEET FOR MAILING TO INTERESTED AND POTENTIALLY INTERESTED PERSONS AND GOVERNMENT AGENCIES

DEPARTMENT OF ENVIRONMENTAL PROTECTION

DIVISION OF WATER QUALITY AND RESOURCES, 1616 COURT HOUSE DRIVE, CAPITAL CITY, STATE (ZIP) 307-445-8922

[Public Notice No. OPP-72-301; Application No. CIY-400-60-301]

FACT SHEET—APPLICATION FOR NPDES PERMIT TO DISCHARGE TO STATE WATERS

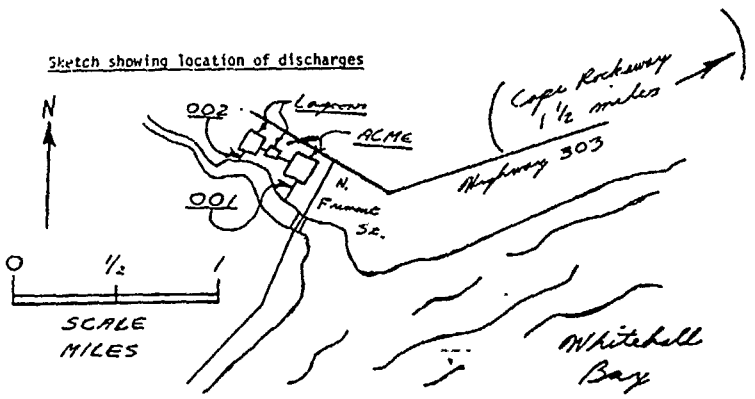
Acme Paper Products, Inc., 11345 North Fremont Street, Cape Rockaway, State (ZIP), has applied for a Department of Environmental Protection permit to discharge pollutants into State waters.

Applicant is a manufacturer of bleached grades of paper from kraft pulp. Two discharges are described in the application: One of utility waste water from applicant's steam generating plant and the other of process wastes from the manufacture of pulp and paper. Both discharges are to Martin Creek one-half-mile upstream from Whitehall Bay. The receiving waters are classified for industrial and navigation use, contact recreation, and propagation of fish and wildlife. A more complete description of the discharges and a sketch of their location follow below.

The application, proposed permit including proposed effluent limitations and special conditions, comments received, and other information is on file and may be inspected and copied in Room 814, 1616 Court House Drive, Capital City, State (ZIP), at any time between 8:15 a.m. and 4:45 p.m., Monday through Friday.

The proposed staff determinations are tentative. Persons wishing to comment upon or object to the proposed determinations are invited to submit same in writing to the above address no later than September 12, 1973. All comments or objections received prior to September 12, 1973, will be considered in the formulation of final determinations regarding the application. If no objections are received, the Director will issue his final determinations within 60 days of the date of public notice. As described more fully below, a public hearing may be held if response to public notice indicates significant public interest.

Sketch showing location of discharges



Description of proposed discharges—Discharge 001. Utility waste water from steam generating plant.

AVERAGE FLOW: 500,000 GALLONS PER OPERATING DAY

Average temperatures:	Intake	Discharge
Summer	85° F.	95° F.
Winter	35° F.	55° F.

Discharge 002. Process wastes from manufacture of pulp and paper.

AVERAGE FLOW: 24,300,000 GALLONS PER OPERATING DAY

Constituents	Milligrams per liter	Pounds per day
BOD	90	18,000
Suspended solids	110	22,000
Phenols	0.5	100
Mercury	0.0025	0.5

Proposed determinations. The Division of Water Quality and Resources has examined the above application. On the basis of applicable effluent limitations and water quality standards, the State Water Quality and Resources Act of 1971, as amended, and regulations issued thereunder, the Division proposes to issue the applicant a permit to discharge subject to effluent limitations and certain other conditions. The following is a brief description of the proposed effluent limitations and special conditions:

(1) *Proposed effluent limitations.*

Discharge 001. none

Discharge 002. visible foam and visible floating solids prohibited. The following discharge constituents shall be limited as follows:

Constituents	Milligrams per liter	Pounds per day
BOD	27.5	5,500
Suspended solids	25	5,000
Phenols	0.10	20
Mercury	0.0005	0.10

(2) *Proposed schedule for compliance.* The applicant shall achieve the effluent levels described in subsection (1) above in accordance with the following schedule:

Submission of final plans to Director by: November 15, 1973.

Commencement of construction by: January 15, 1974.

Completion of construction by: September 15, 1974.

Operational level attained by: November 1, 1974.

(3) *Proposed special conditions.* The applicant is required to operate his treatment facilities at maximum efficiency at all times. The applicant is required to monitor his discharges on a regular basis and report the results every 3 months. The monitoring results will be available to the public. The applicant is required to conduct studies of possible adverse effects of his heated water discharge 001 upon free floating marine life and shellfish in Martin Creek and Whitehall Bay. If applicant's study or independent information supplied to the Director indicate an adverse effect, the applicant will be required to take additional measures to minimize the adverse impact.

Applicable effluent limitations and water quality standards. The following are the effluent limitations and water quality standards which were applied to applicant's discharge in the formulation of the above proposed determinations:

(1) All effluent limitations except mercury are based upon effluent guidelines for the pulp and paper industry, manufacture of bleached paper grades from kraft pulp. See 40 CFR 128.74, 128.89, and 128.91(c).

(2) The mercury limitation is based upon effluent limitations for toxic substances. See 40 CFR 136.22 (b) and (c).

(3) For water quality standards for Martin Creek and Whitehall Bay, See 40 CFR 42.66 et. seq. Both are classified for the following uses: Industrial use, navigational use, contact recreation, and propagation of fish and wildlife.

Written comments. Interested persons are invited to submit written comments upon the proposed discharge and the Director's proposed determinations. Comments should be submitted by September 12, 1973, either in person or by mail to:

Director, Division of Water Quality and Resources, Attention: Office of Permit Processing, 1616 Courthouse Drive, Capital City, State (ZIP).

The application number should appear next to the above address on the envelope and on the first page of any submitted comments. All comments received by September 12, 1973, will be considered in the formulation of final determinations. If no written objections are received, the Director will issue his final determinations no later than 60 days following the date of this notice.

Information and copying. Persons wishing further information may write to the above address or call the Office of Permit Processing at 307 445-8922. Copies of the application, proposed permit including proposed effluent limitations and special conditions, comments received, and other documents (other than those which the Director maintains as con-

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fidential) are available at the Office of Permit Processing for inspection and copying. A copying machine is available for public use at a charge of $0.15 per copy sheet.

Register of interested persons. Any person interested in a particular application of group of applications may leave his name, address, and phone number as part of the file for an application. The list of names will be maintained as a means for persons with an interest in an application to contact others with similar interests.

Public hearings. If submitted comments indicate a significant public interest in the application or if he believes useful information may be produced thereby, the Director, in his discretion, may hold a public hearing on the application. Any person may request the Director to hold a public hearing on the application.

Public notice of a hearing will be circulated at least 30 days in advance of the hearing. The hearing will be held in the vicinity of the discharge. Thereafter, the Director will formulate his final determinations within 60 days. Further information regarding the conduct and nature of public hearings concerning discharge permits may be obtained by writing or visiting the Office of Permit Processing, 1616 Courthouse Drive, Capital City, State (zip).

APPENDIX C

SAMPLE PUBLIC NOTICE FOR PUBLIC HEARINGS HELD IN REGARD TO NPDES APPLICATIONS

DEPARTMENT OF ENVIRONMENTAL PROTECTION

DIVISION OF WATER QUALITY AND RESOURCES, 1616 COURTHOUSE DRIVE, CAPITAL CITY, STATE (ZIP) 307-445-8922

[Public Notice No. OPP-72-301-PH-24; Application No. CIY-400-60-301]

NOTICE—ANNOUNCEMENT OF PUBLIC HEARING ON APPLICATION OF ACME PAPER PRODUCTS TO DISCHARGE POLLUTANTS INTO MARTIN CREEK NEAR WHITEHALL BAY, CAPE ROCKAWAY, EDWARDS COUNTY, STATE

Acme Paper Products, Inc., 11345 North Fremont Street, Cape Rockaway, State (ZIP), has applied for a Department of Environmental Protection permit to discharge pollutants into Martin Creek one-half mile upstream from Whitehall Bay. The discharge and the Department's proposed determinations have been previously described in Public Notice No. OPP-72-301, dated August 12, 1973. Due to numerous comments received concerning the application, the filing of several petitions requesting a hearing, and the likelihood that information may be presented which will assist the Department in the formulation of final determinations regarding the application, the Director of the Department of Environmental Protection will hold a public hearing at the time and place stated below:

Hearing to be held at 7 p.m., on September 30, 1973, in Center High School Gymnasium, 2171 Furlong Avenue, Cape Rockaway, State (ZIP).

Some of the issues to be considered at the hearing are as follows:

(1) Do the Department's proposed effluent limitations for the applicant's discharge No. 002 represent a proper application of industrial effluent guidelines to the applicant's industrial processes.

(2) Do related water quality or environmental factors require the specification of stricter effluent limitations, additional requirements, or particular methods of treatment or control. In particular,

(a) Will the Department's proposed effluent limitations, if met, restore uncontaminated shellfish populations in Whitehall Bay (water quality standards classify Whitehall Bay for propagation of fish and shellfish).

(b) Does contamination of subsurface wells and water supplies of adjacent home and cottage owners result from leaks in applicant's treatment lagoons. If so, does the Department have the authority to require the applicant (i) to repair the leaks, and (ii) to compensate the adjacent home and cottage owners for damages resulting from the contamination of the subsurface wells and water supplies.

(c) Does the Department have the authority to control the manner in which the applicant utilizes adjoining marshes and wetlands as additional treatment lagoons in order to meet the Department's proposed effluent limitations. If so, what measures can be taken by the applicant to minimize any harmful effects to adjoining wetlands and fish and wildlife habitats therein.

All interested parties are invited to be present or to be represented to express their views on these and other issues relating to the above application. Parties making presentations are urged to address their statements to the above stated issues. Oral statements will be heard, but, for the accuracy of the record, all important testimony should be submitted in writing. Oral statements should summarize any extensive written material so there will be time for all interested parties to be heard.

The application, related documents, the Department's proposed limitations, and all comments and petitions received are on file and may be inspected and copied in Room 814, 1616 Court House Drive, Capital City, State (ZIP), at any time between 8:15 a.m. and 4:45 p.m., Monday through Friday. Copies of public notice OPP-72-301 are available at the above address or by calling the Office of Permit Processing at 307—445-8922.

Please bring the foregoing to the attention of persons whom you know would be interested in this matter.

[FR Doc.72-21987 Filed 12-21-72;8:45 am]

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federal register

THURSDAY, JANUARY 11, 1973
WASHINGTON, D.C.

Volume 38 ■ Number 7

PART III

ENVIRONMENTAL PROTECTION AGENCY

■

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

Notice of Proposed Rule Making

No. 7—Pt. III——1

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ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 125]

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

Notice of Proposed Rule Making

Notice is hereby given that the regulations set forth in tentative form below are proposed by the Environmental Protection Agency. The proposed regulations describe, pursuant to the authority contained in sections 402 and 405 of the Federal Water Pollution Control Act Amendments of 1972 (86 Stat. 816 et seq.; Public Law 92-500 (1972)) (hereinafter referred to as the "Act"), the policy and procedures for issuing or denying permits under sections 402 and 405 of the Act.

Section 402 of the Act creates a National Pollutant Discharge Elimination System under which the Administrator of the Environmental Protection Agency may, after opportunity for public hearing, issue permits for the discharge of any pollutant or combination of pollutants, upon condition that such discharge will meet all applicable requirements of the Act relating to effluent limitations, water quality standards and implementation plans, new source performance standards, toxic and pretreatment effluent standards, inspections, monitoring and entry provisions, and guidelines establishing ocean discharge criteria.

Prior to the promulgation of guidelines specifying the requirements of the Act indicated in the preceding paragraph, the Administrator may issue permits under conditions which he determines are necessary to carry out the provisions of the Act. Permit holders (for all point sources, other than publicly owned treatment works) are required to achieve, not later than July 1, 1977, effluent limitations which require the application of best practicable (waste) control technology currently available. Publicly owned treatment works are required to achieve secondary treatment by the same date. In addition, all point source dischargers must comply with applicable water quality standards requirements.

All discharges from point sources into the navigable waters, the waters of the contiguous zone, and the oceans are unlawful unless the discharger possesses a valid permit or is excluded from coverage by law or regulation. Dischargers required to obtain permits include, among other point sources, municipal and other publicly owned waste treatment works, industries discharging directly to navigable waters, and concentrated animal feeding operations.

Industrial, commercial, and residential discharges to municipal or other publicly owned waste treatment works, properly functioning marine engines, and certain discharges to wells associated with oil and gas production, among other exclusions listed in these regulations, do not require discharge permits.

These proposed regulations do not apply in any State where the Administrator has granted authority to a State to carry out a State permit program pursuant to section 402(a)(5) of the Act or where the Administrator has approved a State program pursuant to section 402(b) of the Act. In such cases, the Administrator will suspend issuance of permits pursuant to his authority, except with respect to Federal agencies and instrumentalities, for which the Administrator will continue to process permit applications in accordance with these regulations and will be the exclusive source of permits.

Section 405 of the Act provides that any discharge of sewage sludge that results in any pollutant from the sewage sludge entering the navigable waters is prohibited, except in accordance with a permit issued by the Administrator under section 405. These proposed regulations apply to the discharge of sewage sludge.

Prior to the adoption of the proposed regulations consideration will be given to any comments, suggestions, or objections thereto which are submitted in writing to the Office of Enforcement and General Counsel, Washington, D.C. 20460 by February 12, 1973.

WILLIAM D. RUCKELSHAUS,
Administrator.

JANUARY 5, 1973.

Subpart A—General

Sec.
125.1 Definitions.
125.2 Scope and purpose.
125.3 Law authorizing permits.
125.4 Exclusions.
125.5 Delegation of authority.

Subpart B—Processing of Permits

125.11 General provisions.
125.12 Application for permit.
125.13 Access to facilities.
125.14 Distribution of application and permit.
125.15 State certification.

Subpart C—Terms and Conditions of Permits

125.21 Prohibitions.
125.22 Conditions of permits.
125.23 Schedules of compliance.
125.24 Effluent limitations in permits.
125.25 Duration of permit.
125.26 Special categories of permits.
125.27 Monitoring, recording and reporting.

Subpart D—Notice and Public Participation

125.31 Formulation of tentative determinations.
125.32 Public notice.
125.33 Fact sheets.
125.34 Hearings and appeals.
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Subpart E—Miscellaneous

125.41 Objections to permit by another state.
125.42 Other legal action.
125.43 Environmental impact statements.

AUTHORITY: Secs. 402, 405 of the Federal Water Pollution Control Act Amendments of 1972 (86 Stat. 816 et. seq.; Public Law 92-500).

Subpart A—General

§ 125.1 Definitions.

Except as otherwise specifically provided,

(a) The term "Act" means the Federal Water Pollution Control Act, as amended, Public Law 92-500.

(b) The term "Administrator" means the Administrator of the U.S. Environmental Protection Agency.

(c) The term "applicable effluent standards and limitations" means all State and Federal effluent standards and limitations to which a discharge is subject under the Act, including, but not limited to, effluent limitations, standards of performance, toxic effluent standards and prohibitions, and pretreatment standards.

(d) The term "applicable water quality standards" means all water quality standards to which a discharge is subject under the Act and which have been (1) approved or permitted to remain in effect by the Administrator following submission to him pursuant to section 303(a) of the Act, or (2) promulgated by the Administrator pursuant to section 303(b) or 303(c) of the Act.

(e) The term "contiguous zone" means the entire zone established or to be established by the United States under Article 24 of the Convention of the Territorial Sea and the Contiguous Zone.

(f) The term "discharge" when used without qualification includes a discharge of a pollutant and a discharge of pollutants.

(g) The term "discharge of pollutant" and the term "discharge of pollutants" each means: (1) Any addition of any pollutant to navigable waters from any point source, (2) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.

(h) The term "effluent limitations" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.

(i) The term "Environmental Protection Agency" means the U.S. Environmental Protection Agency.

(j) The term "interstate agency" means an agency of two or more States established by or pursuant to an agreement or compact approved by the Congress, or any other agency of two or more States, having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator.

(k) The term "municipality" means a city, town, borough, county, parish, district, association, or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated

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and approved management agency under section 208 of the Act.

(l) The term "National Pollutant Discharge Elimination System" (hereinafter referred to as "NPDES") for the purpose of these regulations means the system for issuing, conditioning, and denying permits for the discharge of pollutants from point sources into the navigable waters, the contiguous zone, and the oceans, by the Administrator of the Environmental Protection Agency pursuant to section 402 of the Federal Water Pollution Control Act, as amended.

(m) The term "navigable waters" means the waters of the United States including the territorial seas.

(n) The term "new source" means any building, structure, facility, or installation from which there is or may be the discharge of pollutants, the construction of which is commenced after the publication of proposed regulations prescribing a standard of performance under section 306 of the Federal Water Pollution Control Act, as amended, which will be applicable to such source, if such standard is thereafter promulgated in accordance with section 306.

(o) The term "ocean" means any portion of the high seas beyond the contiguous zone.

(p) The term "permit" means any permit or equivalent document or requirement issued to regulate the discharge of pollutants.

(q) The term "person" means an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.

(r) The term "point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.

(s) The term "pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean (1) "sewage from vessels" or (2) water, gas or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if such State determines that such injection or disposal will not result in the degradation of ground or surface water resources.

(*Comment.* The legislative history of the Federal Water Pollution Control Act amendments reflects that the term "radioactive materials" as included within the definition of "pollutant" in section 502 of the Act covers only radioactive materials which are not encompassed in the definition of source, by-product or special nuclear materials as defined by the Atomic Energy Act of 1954, as amended, and regulated pursuant to the latter Act. Examples of radioactive materials not covered by the Atomic Energy Act and, therefore, included within the term "pollutant" are radium and accelerator produced isotopes. (H.R. Rep. 92-911, 92d Cong. 2d sess., 131, Mar. 11, 1972; 117 Cong. Rec. 17401, daily ed., Nov. 2, 1971; 118 Cong. Rec. 9115, daily ed., Oct. 4, 1972.))

(t) The term "pollution" means the man-made or man-induced alteration of the natural chemical, physical, biological, and radiological integrity of water.

(u) The term "Regional Administrator" means one of the Regional Administrators of the U.S. Environmental Protection Agency.

(v) The term "schedule of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard.

(w) The term "sewage" means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes.

(x) The term "sewage sludge" shall mean the solids and precipitates separated from wastewater by unit processes.

(y) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(z) The term "State water pollution control agency" means the State agency designated by the Governor, having responsibility for enforcing State laws relating to the abatement of pollution.

(aa) The term "territorial seas" means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of 3 miles.

(bb) The term "trade secrets" shall mean a secret method or process, not patented, but known only to certain individuals using it in compounding some article of trade having a commercial value.

(cc) The term "treatment works" means any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature to implement section 201 of the Act, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances; extension, improvement, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment.

§ 125.2 Scope and purpose.

(a) These regulations prescribe the policy and procedures to be followed in connection with applications for federally issued permits authorizing discharges into the navigable waters, the waters of the contiguous zone, and the oceans, during the periods that the Administrator of the Environmental Protection Agency may be authorized to issue such permits pursuant to sections 402 and 405 of the Act.

(b) These regulations do not prescribe policy or procedures where the Administrator has authorized a State program pursuant to section 402(a)(5) of the Act or where the Administrator has approved a State program pursuant to section 402(b) of the Act.

§ 125.3 Law authorizing permits.

(a) Section 301(a) of the Act provides that discharges without permits are unlawful. This section states, in part, that "Except in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act, the discharge of any pollutant by any person shall be unlawful."

(b) Section 402 of the Act establishes the National Pollutant Discharge Elimination System (NPDES). This section provides in part that "the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant, or combination of pollutants, * * * upon condition that such discharge will meet either all applicable requirements under sections 301, 302, 306, 307, 308, and 403 of (the) Act, or prior to the taking of necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of (the) Act."

(c) Section 405 of the Act prohibits the discharge of sewage sludge into navigable waters except in accordance with a permit issued by the Administrator under section 405. This section provides in part that "in any case where the disposal of sewage sludge resulting from the operation of a treatment works * * * (including the removal of in-place sewage sludge from one location and its deposit at another location) would result in any pollutant from such sewage sludge entering into the navigable waters, such disposal is prohibited except in accordance with a permit issued by the Administrator under this section."

(d) Unless specifically noted to the contrary, all provisions of these regulations concerning permits under section 402 of the Act, are applicable to permits under section 405 of the Act.

§ 125.4 Exclusions.

The NPDES does not apply to:

(a) Sewage from vessels (section 502(6));

(b) Any addition of any pollutant to the waters of the contiguous zone or the ocean from any vessel or other floating craft (section 502(12)(B));

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(c) Discharges from properly functioning marine engines [1];

(d) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located and if such State determines that such injection or disposal will not result in the degradation of ground or surface water resources (section 502(6));

(e) Aquaculture projects (section 318); and

(f) Dredged or fill material (section 404).

§ 125.5 *Delegation of authority.*

(a) Subject to the appeal provisions of § 125.34 and the national security responsibility provision of § 125.35(c), the authority to issue and condition permits or to deny applications for discharges covered by the NPDES and by section 405 of the Act, is hereby delegated to each of the Regional Administrators of the Environmental Protection Agency for the area which he administers.

(b) The authority granted to the Administrator by sections 308(a) and 308 (b) of the Act, is hereby delegated to each of the Regional Administrators for the area which he administers.

Subpart B—Processing of Permits

§ 125.11 *General provisions.*

(a) All discharges of pollutants or combination of pollutants from all point sources into the navigable waters, the waters of the contiguous zone, or the ocean are unlawful and subject to the penalties provided by the Act, unless the discharger has a permit or is specifically relieved by law or regulation of the obligation of having a permit. When a permit has been issued, discharges must be consistent with the terms and conditions of such permit. Discharges in violation of permit terms and conditions may result in the institution of proceedings under the Act.

(b) The decision as to whether or on what conditions a permit authorizing a discharge will issue will be based upon an evaluation as to how such discharge will meet applicable requirements under the Act, or other applicable laws and regulations. Subsequent to the taking of necessary implementing actions relating to such requirements, all discharges in order to receive a permit must meet the requirements of sections 301, 302, 306, 307, 308, and 403, and all regulation pertaining thereto.

(c) In the period of time prior to the taking of necessary implementing actions relating to all applicable requirements under sections 301, 302, 306, 307, 308, and 403 of the Act, the Administrator may issue permits under such conditions as he determines are necessary to carry out the provisions of the Act. Any permit issued shall include any conditions necessary to insure compliance with any applicable requirements of sections 301, 302, 306, 307, 308, and 403 that become applicable prior to the issuance of the permit. Foremost among other factors to be considered prior to the taking of the necessary implementing actions is the requirement for abatement measures designed to achieve, not later than July 1, 1977, best practicable (waste) control technology currently available for the particular point source (other than publicly owned treatment works) as determined by the Regional Administrator based upon information available to him to date and his professional judgment taking into account the intent of sections, 301, 302, 306, 307, 308, and 403 of the Act. Likewise, publicly owned treatment works must achieve secondary treatment by July 1, 1977, or in accordance with the period specified in section 301(b)(1)(B) of the Act. Furthermore, any permit issued shall include any more stringent condition pursuant to section 301(b)(1)(C) of the Act necessary to insure compliance with any limitation, including those necessary to meet applicable water quality standards, treatment standards, or schedules of compliance, established pursuant to any State law or regulation (under authority preserved by section 510 of the Act) or any other Federal law or regulation, or required to implement any applicable water quality standard established pursuant to the Act. The likely impact or the existing impact of the discharge on the quality and uses of the receiving body of water where no adequate water quality standards exist also may have to be taken into account. In many cases the possibility of occurrence and the probability of effects of spills of materials from the point source are very important. In those cases spills should be considered. The objections of any State or interstate agency whose waters may be affected by the discharge shall be duly considered when making any permit decision.

§ 125.12 *Application for a permit.*

(a) An applicant for a permit must secure the required application form(s) from the Regional Administrator. Application form(s) must also be filed with the Regional Administrator.

(b) Any person who applied for a permit under the Refuse Act Permit Program operating under rules promulgated in the FEDERAL REGISTER on April 7, 1971 (33 CFR 209.131) and whose application has not been denied need not reapply for a permit under these regulations unless the discharge described in the application for a Refuse Act permit has substantially changed in nature, volume, or frequency. Such Refuse Act permit application shall be considered to be an application under the NPDES and shall be treated accordingly.

(c) Any person now discharging whose discharge was not covered by the Refuse Act Permit Program but which is now covered under the NPDES must apply for a permit on or before April 16, 1973.

(d) Any persons wishing to discharge into waters covered by the NPDES on or after June 16, 1973 (but who is not now discharging into such waters) must apply for a permit not later than 180 days in advance of the date on which it is desired to commence the discharge. If persons desire to discharge on or before June 15, 1973, they shall give at the minimum a 60-day notice; and if such notice is impossible they shall apply to the Regional Administrator for a variance.

(e) An application submitted by a corporation must be signed by an official of the rank of corporate vice president or above. In the case of a partnership or a sole proprietorship the application must be signed by a general partner or the proprietor respectively. In the case of a municipal, State, Federal, or other public facility, the application must be signed by the official having responsibility for the overall operation of the facility.

(f) Except as provided below, a fee of $100 will be charged in connection with each application for a permit which involves no more than one outlet from which a discharge will flow. If there is more than one outlet from which the discharge will flow, an additional $50 will be charged for each additional outlet. Agencies or instrumentalities of Federal, State, or local governments will not be required to pay any fee in connection with the filing of an application for a permit.

(g) Minor discharges are those whose discharge on every day of the year is less than 50,000 gallons unless their environmental impact, as determined by the Regional Administrator, is not insignificant. If there is more than one discharge from a facility and the total aggregate discharge from all discharges exceed 50,000 gallons on any day of the year then no discharge will be considered minor. Minor discharges will pay a fee of $10 per application. Where an application is filed for a permit for a minor discharge and where after review of the application the Regional Administrator believes that due to the particular characteristics of this discharge, it should not be considered to be a minor discharge, the applicant shall be advised of this determination and within a reasonable period of time, of not less than 30 days, shall be required to complete the normal application forms and provide the normal fees specified in these regulations.

(h) The fee structure set forth above will be reviewed from time to time as experience with the program is developed, and such fees may be revised. Fees collected shall be used to help defray the cost of administering the program. Checks should be made out to the order of "Environmental Protection Agency."

(i) Permittees who wish to continue to discharge subsequent to the expiration date of their permit must apply for reissuance of the permit using proper

[1] See Congressional Record for Oct. 10, 1972; page E8454, Extension of Remarks; Congressman Robert E. Jones of Alabama, Chairman of the Conference Committee "(The Conference Committee) would not expect the Administrator to require permits to be obtained for any discharges from properly functioning marine engines."

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forms, not less than 180 days prior to the permit expiration date.

§ 125.13 Access to facilities and further information during evaluation of the application.

Permit application forms are designed to fit the normal situation for most facilities in the United States. Therefore, in many cases, further information including site visits may be necessary in order to evaluate the discharge completely and accurately. When the Regional Administrator determines that either further information or a site visit is necessary in order for the Environmental Protection Agency to evaluate the discharge, he shall so notify the applicant and in addition provide a date no later than 60 days hence by which time the requested information will be received and/or the site visit will be accomplished. In the event that a satisfactory response is not received the permit application may be issued or denied and the applicant so notified. Sections 308, 309, and 402(k) of the Act, also provide for sanctions in the event of noncompliance with reasonable requests for additional information.

§ 125.14 Distribution of application and permit.

(a) When an application for a permit is received Regional Administrators shall determine if the applicant has provided all of the information required by the application form and by this section.

(b) In order to assure that the Secretary of the Army acting through the Chief of Engineers has adequate time to evaluate the impact of the proposed discharge on anchorage and navigation, Regional Administrators will forward to the District Engineer in the appropriate District one copy of the application form immediately upon its receipt in the Regional Office in completed form. Accompanying the application will be notice that the Environmental Protection Agency has received a request for a permit to discharge and that the District Engineer has a stated number of days to evaluate the impact of granting such permit upon anchorage and navigation and to advise the Regional Administrator of his evaluation. District Engineers of the Corps of Engineers will normally be given 30 days to evaluate the impact on anchorage and navigation. Where the Regional Administrator finds that less time should be allowed he should so advise the District Engineer of such lesser period of time while at the same time outlining his reasons for such lesser period of time. In all cases the Regional Administrator should advise the District Engineer that failure to answer within the allotted period of time will be deemed to be a finding that anchorage and navigation will not be substantially impaired by granting of this permit. Where the District Engineer advises the Regional Administrator that anchorage and navigation of any of the navigable waters would be substantially impaired by the granting of a permit, such permit will be denied and the applicant shall be so notified. Where the District Engineer advises the Regional Administrator that the imposition of specified conditions upon the permit is necessary to avoid any substantial impairment of any of the navigable waters, then the Regional Administrator shall impose upon the permit those conditions so specified by the District Engineer. Where the District Engineer notifies the Regional Administrator that more time is needed for his evaluation, more time will be granted where it appears that the public interest warrants such extension.

(c) Upon receipt of an application which does not include a State certification where such certification is required by section 401 of the Act, the Regional Administrator will make available one copy of the application form to the State water pollution control agency for the State in which the discharge will occur. Accompanying the application will be a statement by the Regional Administrator that a request for a permit has been received by the Environmental Protection Agency, and that before such permit can issue, the State must certify that the discharge will comply with the applicable provisions of sections 301, 302, 306, and 307 or that there are no applicable effluent or other limitations under sections 301 and 302 and there are no applicable standards under sections 306 and 307, or deny such certification or waive its right to certify or deny. The Regional Administrator must also state that such certification or denial must be received within a reasonable period of time or a waiver will be deemed to have occurred.

(d) If a permit issues, a copy of the permit and, if not previously transmitted, a copy of the application forms, shall be transmitted to the State in which the discharge is located. Copies of these documents shall be available for observation and reproduction by the public in the Regional Office.

(e) Regional Administrators shall assist applicants for permits in coordinating the requirements of the Act, with those of appropriate public health agencies.

(f) Whenever the provisions of the Fish and Wildlife Coordination Act, 16 U.S.C. 662, apply, Regional Administrators shall consult with appropriate officials of the U.S. Department of the Interior and the U.S. Department of Commerce, and with the head of the agency exercising administration over the wildlife resources of the State in which the discharge will occur.

§ 125.15 State certification.

(a) Section 401(a)(1) of the Act, provides that "Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge originates or will originate, that any such discharge will comply with the applicable provisions of sections 301, 302, 306, and 307 of this Act. In the case of any such activity for which there is not an applicable effluent limitation or other limitation under sections 301(b) and 302, and there is not an applicable standard under sections 306 and 307, the State shall so certify." Where certification is required, no license or permit shall be granted until the certification has been obtained or has been waived. A waiver occurs when the certifying agency fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed 1 year) after receipt of such request. Three months shall generally be considered to be a reasonable period of time. If, however, special circumstances identified by the Regional Administrator require that action on a permit application be taken within a more limited period of time, the Regional Administrator shall determine a reasonable lesser period of time, advise the certifying agency of the need for action by a particular date and that, if certification is not received by the date established, it will be considered that the requirement for certification has been waived. Similarly, if it appears that circumstances may reasonably require a period of time longer than 3 months, the Regional Administrator may afford the certifying agency up to 1 year to provide the required certification before determining that a waiver has occurred. Where such extension of time is made at the request of the certifying agency, the request must be in writing and must include the reasons for the request. The Regional Administrator shall check with the certifying agency at the end of the allotted period of time before determining that a waiver has occurred.

(b) Any certification provided shall set forth any effluent limitations and other limitations, and monitoring requirements necessary to insure compliance with any applicable effluent limitations and other limitations, under section 301 or 302 of the Act, standard of performance under section 306 of the Act, or prohibition, effluent standard, or pretreatment standard under section 307 of the Act, and with any other appropriate requirement of of State law set forth in such certification.

(c) Discharges from agencies or instrumentalities of the Federal Government, as provided in section 401(a)(6) of the Act, do not require certification pursuant to section 401. Regional Administrators will, however, make available one copy of any application from any Federal point source to the State in which the discharge is located and will request that the State, within a reasonable time, comment upon compliance of the discharge with the provisions of sections 301, 302, 306, and 307 and any other applicable State and local water quality requirements.

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Subpart C—Terms and Conditions of Permits

§ 125.21 Prohibitions.

(a) No permit shall issue in cases where the applicant, pursuant to section 401 of the Act, is required to obtain a State or other appropriate certification that the discharge will comply with the applicable provisions of sections 301, 302, 306, and 307 and such certification was denied (section 401(a)).

(b) No permit shall issue where pursuant to section 401(a)(2) of the Act, the imposition of conditions cannot insure compliance with the applicable water quality requirements of all involved States.

(c) No permit shall issue if, in the judgment of the Secretary of the Army acting through the Chief of Engineers, anchorage and navigation of any of the navigable waters would be substantially impaired by the discharge (section 402 (b)(6)).

(d) No permit shall issue for the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste into the navigable waters (section 301(f)).

(e) No permit shall issue for any discharge from a point source in conflict with a plan approved pursuant to section 208(b) of the Act (section 208(e)).

(f) No permit shall issue for any discharge to the territorial sea, the waters of the contiguous zone, or the oceans prior to the promulgation of guidelines under section 403(c) of the Act unless the Regional Administrator determines it to be in the public interest (section 403(a)).

(g) No permit shall issue for any discharge to the territorial sea, the waters of the contiguous zone, or the oceans after promulgation of guidelines under section 403(c) except in compliance with such guidelines (section 403(a)).

(h) No permit shall issue for any discharge to the territorial sea, the waters of the contiguous zone, or the oceans, subsequent to the promulgation of guidelines pursuant to section 403(c) of the Act, where insufficient information exists to make a reasonable judgment as to whether the discharge complies with any such guidelines (section 403(c)(2)).

§ 125.22 Conditions of permits.

(a) Regional Administrators shall insure that the terms and conditions of all issued permits provide for and insure the following:

(1) That all discharges authorized by the permit shall be consistent with the terms and conditions of the permit; that facility expansions, production increases, or process modifications which result in new or increased discharges of pollutants must be reported by submitting a new application; that the discharge of any pollutant not identified and authorized by the permit or the discharge of any pollutant more frequently than or at a level in excess of that identified and authorized by the permit shall constitute a violation of the terms and conditions of the permit;

(2) That the permit may be modified, suspended, or revoked in whole or in part during its term for cause including, but not limited to, the following:

(i) Violation of any terms or conditions of the permit;

(ii) Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts; and,

(iii) A change in conditions or the existence of a condition which requires either a temporary or permanent reduction or elimination of the authorized discharge;

(3) That the permittee shall permit the Regional Administrator or his authorized representative, and/or the authorized representative of the State water pollution control agency in the case of non-Federal facilities, upon the presentation of his credentials:

(i) To enter upon permittee's premises in which an effluent source is located or in which any records are required to be kept under terms and conditions of the permit;

(ii) To have access to and copy any records required to be kept under terms and conditions of the permit;

(iii) To inspect any monitoring equipment or method required in the permit; or,

(iv) To sample any discharge of pollutants.

(4) That the permit may not be transferred to a third party without the prior written approval of the Regional Administrator. Such prior written approval will be granted by the Regional Administrator where the transferee acquires a property interest in the point source and agrees in writing to fully comply with all the terms and conditions of the permit and the Act. Where the discharge is not in compliance with the terms and conditions of the permit or the Act at the time of the transfer, the transferee must agree in writing to bring the discharge into compliance with the terms and conditions of the permit and the Act, within the shortest reasonable period of time as determined by the Regional Administrator.

(5) That the permittee shall at all times maintain in good working order and operate at maximum efficiency any facilities or systems of control installed by the permittee to achieve compliance with the terms and conditions of the permit.

(6) The issuance of a permit does not convey any property rights either in real estate or material, or any exclusive privileges, nor does it authorize any injury to private property or invasion of rights, nor any infringement of Federal, State, or local laws or regulations; nor does it obviate the necessity of obtaining State or local assent required by law for the discharge authorized.

(7) That each permittee shall within 30 days from the day the permit was issued agree in writing to comply with all the terms and conditions of the permit and the Act. Such agreement of the permittee may be subject to the reservation of all of the permittee's rights under section 509 of the Act.

(b) Permits shall also include such special conditions as the Regional Administrator considers necessary or appropriate to specify and to assure compliance with applicable effluent limitations or other water quality requirements including schedules of compliance, treatment standards and such other conditions as the Regional Administrator considers necessary or appropriate to carry out the provisions of the Act. Permits shall also contain such other conditions as the District Engineer of the Corps of Engineers considers to be necessary to insure that navigation and anchorage will not be substantially impaired. Also, conditions recommended by State water pollution control officials or other governmental officials may be added to permits if the Regional Administrator believes such recommended conditions will aid in carrying out the purposes of the Act. Furthermore, all permits will be conditioned upon achieving compliance with any applicable effluent limitations and other limitations, and monitoring requirements set forth on any certification pursuant to section 401 of the Act.

§ 125.23 Schedules of compliance in permits.

Regional Administrators shall follow the procedures below in setting schedules of compliance in permits:

(a) With respect to any discharge which is not in compliance with applicable effluent standards and limitations, applicable water quality standards, and other applicable requirements, the permittee shall be required to take specific steps to achieve compliance with the following:

(1) Any schedule of compliance contained in (i) applicable effluent standards and limitations; or, (ii) water quality standards, if more stringent; or (iii) any other applicable requirements, if more stringent; or

(2) In the absence of any applicable schedule of compliance in the shortest, reasonable period of time, such period not to be extended beyond July 1, 1977.

(b) In any case where the period of time for compliance specified in paragraph (a) of this section exceeds 9 months one or more interim dates shall be specified for which the permittee shall achieve interim requirements; in no event shall more than 9 months elapse between interim dates. Interim dates and the final date for compliance shall fall on the last day of February, April, June, August, October, and December.

(c) Not later than fourteen (14) days following each interim date and the final date of compliance the permittee shall provide the Regional Administrator with written notice of the permittee's compliance or noncompliance with the interim or final requirements.

§ 125.24 Effluent limitations in permits.

In the application of effluent standards and limitations, water quality standards, and other applicable requirements, the Regional Administrator shall for each permit, specify average and maximum daily quantitative limitations for the

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level of pollutants in the authorized discharge of terms of weight or other appropriate expression. Where a schedule of compliance is included as a condition in a permit, effluent limitations shall be included for the interim period as well as for the period following the final compliance date.

§ 125.25 Duration of permit.

(a) No permit will issue for a period longer than 5 years.

(b) *Permits* of less than 5 years duration may issue in appropriate cases and Regional Administrators shall give great weight to the advice of State or interstate water pollution control officials on the appropriate duration for particular permits.

(c) All permits will be for a fixed term.

§ 125.26 Special categories of permits.

(a) *Disposal of pollutants into wells.* If an applicant for a permit proposes to dispose of pollutants into wells as part of a program to meet the proposed terms and conditions of a permit, the Regional Administrator shall specify additional terms and conditions in the permit which shall (1) prohibit the proposed disposal, or (2) control the proposed disposal in order to prevent pollution of ground and surface waters and to protect the public health and welfare.

(b) *Discharges from publicly owned treatment works.* (1) If the permit is for a discharge from a publicly owned treatment works, the Regional Administrator shall require the permittee to provide notice to the Regional Administrator of the following:

(i) Any new introduction of pollutants into such treatment works from a source which would be a new source as defined in section 306 of the Act if such source were discharging pollutants;

(ii) Any new introduction of pollutants which exceeds 10,000 gallons on any one day into such treatment works from a source which would be subject to section 301 of the Act if such source were discharging pollutants; and

(iii) Any substantial change in volume or character of pollutants being introduced into such treatment works by a source introducing pollutants into such works at the time of issuance of the permit.

(2) Such notice shall include information on—

(i) The quality and quantity of effluent to be introduced into such treatment works, and

(ii) Any anticipated impact of such change in the quantity or quality of effluent to be discharged from such publicly owned treatment works.

(3) The permittee shall require any industrial user of such treatment works to comply with the requirements of sections 204(b), 307, and 308 of the Act. Any industrial user subject to the requirements of section 307 of the Act shall be required by the permittee to prepare and transmit to the Regional Administrator periodic notice (over intervals not to exceed 9 months) of progress toward full compliance with section 307 requirements.

§ 125.27 Monitoring, recording and reporting.

(a) Any permit shall be subject to such monitoring requirements as may be reasonably required by the Regional Administrator, including the installation, use, and maintenance of monitoring equipment or methods (including, where appropriate, biological monitoring methods).

(b) Any discharge which

(1) Averages more than 50,000 gallons per operating day,

(2) The Regional Administrator requires to be monitored, or

(3) Contains toxic pollutants for which an effluent standard has been established by the Administrator pursuant to section 307(a) of the Act, shall be monitored by the permittee for at least the following:

(i) Flow (in gallons per day); and

(ii) All of the following pollutants;

(A) Pollutants (measured either directly or indirectly through the use of accepted correlation coefficients or equivalent measurements) which are subject to reduction or elimination under the terms and conditions of the permit;

(B) Pollutants which the Regional Administrator finds, on the basis of information available to him, could have a significant impact on the quality of navigable waters;

(C) Pollutants specified by the Administrator, in regulations issued pursuant to the Act, as subject to monitoring;

(c) Each effluent flow or pollutant required to be monitored pursuant to Paragraph (b) of this section shall be monitored at intervals sufficiently frequent to yield data which reasonably characterizes the nature of the discharge of the monitored effluent flow or pollutant. Variable effluent flows and pollutant levels shall be monitored at more frequent intervals than relatively constant effluent flow and pollutant levels which may be monitored at less frequent intervals.

(d) The Regional Administrator shall specify recording requirements for any permit which requires monitoring of the authorized discharge consistent with the following:

(1) The permittee shall maintain records of all information resulting from any monitoring activities required of him in his permit;

(2) Any records of monitoring activities and results shall include for all samples;

(i) The date, exact place, and time of sampling;

(ii) The dates analyses were performed;

(iii) Who performed the analyses;

(iv) The analytical techniques/methods used; and,

(v) The results of such analyses;

(3) The permittee shall be required to retain for a minimum of 3 years any records of monitoring activities and results including all original strip chart recordings for continuous monitoring instrumentation and calibration and maintenance records. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the permittee or when requested by the Regional Administrator.

(e) The Regional Administrator shall require periodic reporting (at a frequency of not less than once per year) on the proper NPDES reporting form of monitoring results obtained by a permittee pursuant to monitoring requirements in a permit. Such reporting periods, whose length shall be determined by the Regional Administrator, shall end on the last day of February, April, June, August, October, and/or December.

Subpart D—Notice and Public Participation

§ 125.31 Formulation of tentative determinations.

The Regional staff shall formulate and prepare tentative determinations with respect to a permit in advance of public notice of the proposed issuance or denial of the permit. Such tentative determinations shall include at least the following:

(a) A proposed determination to issue or to deny a permit for the discharge described in the application; and,

(b) If the determination proposed in paragraph (a) of this section is to issue the permit, the following additional tentative determinations;

(1) Proposed effluent limitations for those pollutants proposed to be limited;

(2) A proposed schedule of compliance, as explained in § 125.23, including interim dates and requirements, for meeting the proposed effluent limitations; and,

(3) A brief description of any other proposed special conditions (other than those required by § 125.22) which will have a significant impact upon the discharge described in the application.

§ 125.32 Public notice.

(a) Public notice of every complete application for a permit shall be circulated in a manner designed to inform interested and potentially interested persons of the discharge and of the proposed determination to issue or to deny a permit for the discharge. Public notice of public hearings shall be circulated in a manner designed to inform interested and potentially interested persons of the discharge and of the intention to hold a public hearing on the matter of a permit being issued for the discharge. Procedures for the circulation of public notice shall include at least the following:

(1) Notice shall be circulated within the geographical area of the proposed discharge; such circulation shall include any one of the following:

(i) Posting in the post office and public places of the municipality nearest the premises of the applicant in which the effluent source is located;

(ii) Posting near the entrance to the applicant's premises and in nearby places; and,

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(iii) Publishing in local newspapers and periodicals, or, if the local newspaper is not a daily newspaper, in a daily newspaper of general circulation;

(2) Notice shall be mailed to any person or group upon request; and

(3) The Regional Administrator shall add the name of any person or group upon request to a mailing list to receive copies of notices for all applications within the State or within a certain geographical area.

(4) Regional Administrators shall notify other appropriate government agencies of each complete application for a permit and of public hearings and shall provide such agencies an opportunity to submit their written views and recommendations on each complete application.

(b) (1) Where notice is being given of an application for a permit, the Regional Administrator shall provide a period of not less than thirty (30) days following the date of the public notice during which time interested persons may submit their written views concerning the tentative determinations or request that a public hearing be held. All written comments submitted during the 30-day comment period shall be retained by the Regional Administrator and considered in the formulation of his final determinations with respect to the application.

(2) Where notice is being given of a public hearing, the Regional Administrator shall provide a period of not less than 30 days following the date of the public notice during which time interested persons may prepare themselves for the hearing.

(c) The contents of public notice shall include at least the following:

(1) Name, address, phone number of Regional Office issuing the public notice;

(2) Name and address of each applicant;

(3) Brief description of each applicant's activities or operations which result in the discharge described in the application (e.g., municipal waste treatment plant, steel manufacturing, drainage from mining activities);

(4) Name of waterway to which each discharge is made and a short description of the location of each discharge on the waterway;

(5) A statement of the Regional staff's tentative determination to issue or deny a permit for the discharge described in the application;

(6) A brief description of the procedures for the formulation of final determinations, including the 30-day comment period required by paragraph (b) of this section and any other means by which interested persons may influence or comment upon those determinations; and

(7) Address and phone number of premises at which interested persons may obtain further information, request a copy of the fact sheet described in § 125.33, and inspect and copy all application forms and related documents.

(d) If individual States in connection with applications for certification required by section 401 of the Act wish to enter into agreements for joint public notice concerning proposed discharges, the Regional Administrator may, after consulting with Headquarters, approve mutually satisfactory agreements and such agreements, once published in the FEDERAL REGISTER, shall supersede this § 125.32.

(e) Any public notice issued under this section may describe more than one discharge except that each discharge will be described separately.

§ 125.33 Fact sheets.

Prior to issuance of public notice the Regional Administrator shall prepare and, following public notice, shall send, upon request to any person a fact sheet with respect to the application described in the public notice. The contents of such fact sheets shall include at least the following information:

(a) A sketch or detailed description of the location of the discharge described in the application;

(b) A quantitative description of the discharge described in the application which includes at least the following:

(1) The rate or frequency of the proposed discharge; if the discharge is continuous, the average daily flow in gallons per day or million gallons per day;

(2) The average summer and winter temperatures of the discharge in degrees Fahrenheit; and,

(3) The average daily discharge in pounds per day of any pollutants which are present in significant quantities or which are subject to limitations or prohibition under sections 301, 302, 306, or 307 of the Act and regulations published thereunder;

(c) The tentative determinations required under § 125.31;

(d) A brief citation, including a brief identification of the uses for which the receiving waters have been classified, of the water quality standards and effluent standards and limitations applied to the proposed discharge; and,

(e) A more detailed description of the procedures for the formulation of final determinations than that given in the public notice including:

(1) The term of the 30-day comment period required by § 125.32 and the address where comments will be received;

(2) Procedures for requesting a public hearing and the nature thereof; and

(3) Any other procedures by which the public may participate in the formulation of the final determinations.

§ 125.34 Hearings and appeals.

(a) *Definitions.* (1) "Party" means any affected person who files a request for a hearing meeting the requirements of paragraph (b) of this section and whose request is not denied.

(2) "Affected person" means the Environmental Protection Agency; the water pollution control agency of any State or States in which the discharge or proposed discharge shall originate, or which may be affected by such discharge; the applicant; and any foreign country, or other interested person or persons.

(b) *Initiation of hearings.* Any affected person may within 30 days of the first day of public notice of an application for a permit pursuant to § 125.32 request the Regional Administrator to hold a public hearing to consider the issuance of a permit under this part. Upon receipt of any such request, stating with particularity any objections to the issuance of the proposed permit, and the issues of fact, law, or policy which are proposed to be considered at the hearing, the Regional Administrator shall fix a time and place for the public hearing. After the filing of the initial request, any other affected person may file a request under this subsection. Regional Administrators shall deny any requests not meeting the requirements of this subsection. Such denial shall be accompanied by a brief written statement setting forth the reasons for his denial.

(c) *Location of hearings.* All proceedings conducted pursuant to this section shall be held in the State of the discharge or other appropriate area.

(d) *Notice of hearing.* Public notice of the public hearing shall be given as provided for by § 125.32.

(e) *Presiding Officer.* After granting a public hearing in accordance with paragraph (b) of this section the Regional Administrator shall appoint a qualified person to serve as Presiding Officer for such hearing. No official who participated in the development of proposed conditions for the permit to be considered at such hearing may serve as Presiding Officer.

(f) *Hearing file.* Upon his appointment pursuant to paragraph (e) of this section, the Presiding Officer shall establish a hearing file. The hearing file shall include the permit application and supporting data, the staff recommendation for proposed permit conditions, the request or requests for the hearing, any data or material submitted in justification thereof, and such other material as the Presiding Officer deems relevant to the hearings. The hearing file shall be available for inspection by any person subject to the requirements of § 125.35.

(g) *Representation.* At the hearing, any party may appear on his own behalf, or may be represented by counsel or by any other authorized representative.

(h) *Prehearing conferences.* (1) In the discretion of the Presiding Officer, prehearing conferences may be held prior to any hearing or hearing on appeal held pursuant to this section. All parties will be given reasonable notice of not less than 10 days of the time and location of the conference. In the discretion of the Presiding Officer, persons other than parties may be included in attendance. At the conference, the Presiding Officer may:

(i) Obtain stipulations and admissions, and identify disputed issues of fact and law.

(ii) Mark and admit exhibits.

(iii) Set a hearing schedule which includes definite or tentative times for as many of the following as are deemed necessary by the Presiding Officer:

(A) Oral and written statements.

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(B) Submission of written direct testimony as required by the Presiding Officer.

(C) Oral direct and cross-examination, if any is permitted.

(D) Oral argument, if any is permitted.

(E) Submission of proposed findings of fact.

(2) The results of any conference shall be reduced to writing by the Presiding Officer and made part of the hearing file.

(i) *Conduct of hearings.* (1) Hearings shall be conducted by the Presiding Officer in an orderly but expeditious manner. Any party shall be permitted to submit oral or written statements concerning the proposed permit, and to present views and recommendations thereon. In the discretion of the Presiding Officer, other persons may be allowed to present oral statements for the hearing record. All persons will be allowed to present written statements for the hearing record.

(2) The Presiding Officer shall have discretion to establish reasonable limits upon the time allowed for statements of witnesses, and for arguments of parties, or their counsel or representatives.

(3) In view of the need for an expeditious hearing, and the cross-examination provided in paragraph (i) (5) of this section, no cross-examination shall be permitted in hearings held pursuant to paragraph (b) of this section, except as provided in paragraph (i) (6) of this section.

(4) Hearings shall be reported verbatim. Copies of transcripts of proceedings may be purchased by any person from the Environmental Protection Agency.

(5) All written statements, charts, tabulations, and similar data offered in evidence at the hearing shall, upon a showing satisfactory to the Presiding Officer of their relevancy and materiality, be received in evidence and shall constitute a part of the hearing file.

(6) In the discretion of the Presiding Officer exercised before the hearing begins, the hearing may be held in conformity with the requirements of paragraphs (l), (m), (n) of this section. If the hearing is held in conformity with such requirements, no request for a hearing on appeal may be filed under paragraphs (k) and (n) of this section and any issues specified in the requests for hearings shall be considered.

(j) *Initial decision.* On the basis of the hearing file and the evidence adduced at the hearing, the Presiding Officer shall determine whether the proposed permit conditions meet the requirements of the Act. If he determines that the proposed conditions do not meet such requirements, he shall set forth such conditions as he determines are necessary to comply with the requirements of the Act, or shall determine that the permit should be denied. The decision of the Presiding Officer shall be provided to all parties and be available to the public within 20 days of the completion of the hearing. Such initial decision shall constitute the final decision of the Regional Administrator with regard to the application for a permit unless within 10 days of the date of the Presiding Official's decision, any party files with the Regional Administrator a request for a hearing on appeal or for findings and opinion. If no such request is filed, the Regional Administrator shall issue the permit promptly with conditions established by the Presiding Officer or shall deny the permit according to the decision of the Presiding Officer.

(k) *Availability of hearing on appeal.* (1) Any party requesting a hearing on appeal shall submit his request in writing to the Administrator through the Regional Administrator. Any such request shall set forth in detail the basis of the request, and shall identify any expert witnesses which are requested to testify, and any issues of fact concerning the proposed discharge with respect to which cross-examination of further testimony of witnesses, or further evidence or argument in rebuttal is necessary. The Administrator shall grant the request for a hearing on appeal if he determines:

(i) That the request presents material issues of fact relating to the issuance of the proposed permit; and

(ii) That such issues require cross-examination or further evidence, testimony, or argument.

(2) Upon granting a request for a hearing on appeal the Administrator shall specify in writing those issues which meet the requirements of paragraphs (k) (1) (i) and (ii) of this section.

(l) *Conduct of hearing on appeal.* (1) The Administrator shall designate an official of the Environmental Protection Agency to serve as Presiding Officer for the hearing on appeal. No official who participated in the initial hearing and decision under this section, or who participated in the development of proposed conditions for the permit considered at such hearing, may serve as Presiding Officer on appeal.

(2) The Presiding Officer shall conduct the hearing on appeal in an orderly but expeditious manner. The parties may offer oral or written testimony, subject to the exclusion by the Presiding Officer of irrelevant, immaterial, and repetitious evidence.

(3) The hearing on appeal shall be confined to those issues specified by the Administrator pursuant to paragraph (k) (2) of this section.

(4) Witnesses shall be required to make oath or affirmation.

(5) Witnesses may, in the discretion of the Presiding Officer, be examined or cross-examined by the Presiding Officer, the parties, or their representatives. Among the factors to be considered by the Presiding Officer in determining whether or not to allow cross-examination are:

(i) Whether witness credibility, veracity, and demeanor are relevant to a fair resolution of factual issues; and

(ii) Whether, without cross-examination, parties would otherwise have an adequate opportunity to rebut opposing evidence.

To insure fair and expeditious consideration of all material issues, the Presiding Officer shall have discretion to limit the time allowed for examination and cross-examination. The Presiding Officer may exclude any testimony not relevant to the issues specified by the Administrator pursuant to paragraph (k) (2) of this section.

(6) Hearings on appeal shall be reported verbatim. Copies of transcripts of proceedings may be purchased by any person from the Environmental Protection Agency.

(7) All written statements, charts, tabulations, and similar data offered in evidence at the hearing shall, upon a showing satisfactory to the Presiding Officer of their relevancy, and materiality, be received in evidence and shall constitute a part of the hearing file.

(8) Parties shall have the right to present for the record oral argument, and argument or evidence in rebuttal, within reasonable time limits set by the Presiding Officer.

(9) The decision of the Presiding Officer in a hearing on appeal shall be issued according to the provisions of paragraph (j) of this section.

(m) *Official notice.* In any hearing or hearing on appeal under this section, the Presiding Officer may take official notice of any general, technical or scientific fact or material within the specialized knowledge of the Environmental Protection Agency. All parties shall be notified of any fact or material so noticed, and shall be afforded an opportunity to contest such facts or material.

(n) *Findings of fact and opinion.* At any time prior to 10 days following the issuance of the decision of the Presiding Officer in a hearing or hearing on appeal held pursuant to this subpart, any party may request the Presiding Officer to issue findings of fact and an opinion with regard to issues raised at the hearing or hearing on appeal. The party shall specify the issues on which findings and an opinion are requested. In the discretion of the Presiding Officer, parties may be required to submit proposed findings of fact within a period of not more than 20 days. The Presiding Officer shall issue his findings of fact and opinion no later than 20 days following the receipt of a request for such findings and opinion unless he requires the submission of proposed findings of fact. Where the submission of proposed findings of fact are required the Presiding Officer shall issue his findings of fact and opinion no later than 20 days following the end of the period he specified for receipt of such proposed findings. The findings of fact and opinion shall become part of the record, and shall be made available to all parties participating in the hearing or hearing on appeal. In the case of a hearing under paragraph (b) of this section, any party may submit a request for a hearing on appeal within 10 days following the issuance of the findings and opinion.

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§ 125.35 Public access to information.

(a) Certifications pursuant to section 401 of the Act, the comments of all governmental agencies on a permit application, and all information and data provided by an applicant or a permittee identifying the nature and frequency of a discharge shall be available to the public without restriction. All other information (other than effluent data) which may be submitted by an applicant in connection with a permit application or which may be furnished by a permittee in connection with required periodic reports shall also be available to the public unless the applicant or permittee specifically identifies and is able to demonstrate to the satisfaction of the Regional Administrator or his authorized representative that the disclosure of such information or a particular part thereof to the general public would divulge methods or processes entitled to protection as trade secrets.

(b) Where the applicant or permittee is able to demonstrate to the satisfaction of the Regional Administrator or his authorized representative that the disclosure of the information or a particular part (other than effluent data) thereof would result in methods or processes entitled to protection as trade secrets being divulged, the Regional Administrator shall treat the information or the particular part (other than effluent data) as confidential and not release it to any unauthorized person. Such information may be divulged to other officers, employees, or authorized representatives of the United States concerned with carrying out the Act.

(c) Notwithstanding paragraphs (a) and (b) of this section, the Administrator, when the national security requires, may withhold any information from the public.

Subpart E—Miscellaneous

§ 125.41 Objections to permit by another State.

(a) Whenever following receipt of the certification described in § 125.14 the Regional Administrator determines that a discharge may affect the quality of the waters of any State other than the State that made the certification, the Regional Administrator shall, within 30 days of such certification, notify such other State and the applicant of his determination and shall transmit to such other State a copy of the fact sheet described in § 125.22 and upon request a copy of the application. If such other State determines that the discharge will affect the quality of its waters so as to violate any water quality requirement in such State such other State shall have a period of 60 days beginning with the date notice from the Regional Administrator was received within which to notify the Regional Administrator in writing of its objection to the issuance of a permit and to request a public hearing on the objection. Upon receipt of such request, the Regional Administrator shall hold a hearing in conformity with § 125.34 herein. Based upon the record, the Regional Administrator shall issue a permit: *Provided*, That if the imposition of conditions cannot assure compliance with the applicable water quality requirements of all of the involved States, the Regional Administrator shall deny the permit.

(b) Each affected State shall be afforded an opportunity to submit written recommendations to the Regional Administrator which the Regional Administrator may incorporate into the permit if issued. Should the Regional Administrator fail to incorporate any written recommendations thus received, he shall provide to the affected State or States a written explanation of his reasons for failing to accept any of the written recommendations.

(c) Where an interstate agency has authority over waters that may be affected by the issuance of a permit, it shall be afforded to rights of a State pursuant to paragraphs (a) and (b) of this section.

§ 125.42 Other legal action.

Except as provided in section 402(k) of the Act, the mere filing of an application for a permit to discharge into waters covered by the NPDES will not preclude legal action in appropriate cases for violation of the Federal Water Pollution Control Act. The institution of either a civil or criminal action by the United States may not preclude the acceptance or continued processing of a permit application.

§ 125.43 Environmental impact statements.

Section 511(c)(1) of the Act provides that with the exception of permits for new sources as defined in section 306, no action of the Administrator taken pursuant to the Act shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

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PART II

ENVIRONMENTAL PROTECTION AGENCY

■

PUBLIC PARTICIPATION IN WATER POLLUTION CONTROL PROGRAMS

Proposed Rule Making

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ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 105]

PUBLIC PARTICIPATION IN WATER POLLUTION CONTROL PROGRAMS

Notice of Proposed Rule Making

Notice is hereby given that the regulations set forth in tentative form below are proposed by the Environmental Protection Agency. The proposed regulations specify minimum guidelines for public participation in certain processes under the Federal Water Pollution Control Act, as amended (Public Law 92-500; 86 Stat. 816; 33 U.S.C. 1251).

Section 101(e) of the Act requires the Administrator of the Environmental Protection Agency, in cooperation with the States, to develop and publish such regulations; and to provide for, encourage, and assist public participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan, or program established by the Administrator or any State under the Act.

The proposed regulations set forth policy and objectives in regard to public participation, describe the provisions required in a minimum public participation program at State and Federal levels of governmental activity for water pollution control, call for a report on public participation efforts in relation to certain actions, and give minimum procedural guidelines for public hearings. Other regulations in Chapter 40 give more explicit requirements for public hearings and other procedures related to particular programs under the Act.

The proposed public participation regulations have been developed with informal participation of and suggestions from numerous persons, including representatives of several citizen and conservation groups, trade organizations, governments, and other interests. The States have had an opportunity to comment on the proposed regulations in draft form. Further participation and views are sought at this time in order to develop meaningful guidelines for fully effective public involvement in efforts to attain the objectives of the Act.

Prior to the adoption of the proposed regulations, consideration will be given to comments, suggestions, or objections which may be submitted in writing to the Director, Office of Public Affairs, U.S. Environmental Protection Agency, Washington, D.C. 20460, on or before April 24, 1973.

WILLIAM D. RUCKELSHAUS,
Administrator.

FEBRUARY 16, 1973.

PART 105—PUBLIC PARTICIPATION IN WATER POLLUTION CONTROL

Sec.

105.1 Scope.
105.2 Policy and objectives.
105.3 Required program and reports.
105.4 Guidelines for agency programs.
105.5 Guidelines for reporting.
105.6 Guidelines for evaluation.
105.7 Guidelines for public hearings.
105.8 Coordination and nonduplication.

§ 105.1 Scope.

This part sets forth minimum guidelines for public participation in the processes of development, revision and enforcement of any regulation, standard, effluent limitation, plan or program under the Federal Water Pollution Control Act, as amended (Public Law 92-500; 86 Stat. 816; 33 U.S.C. 1251), in accordance with section 101(e) of the Act. This part is applicable to all Environmental Protection Agency (EPA) components concerned with the Federal Water Pollution Control Act, including EPA Headquarters program units and EPA Regional Offices, and to States and interstate agencies. These guidelines contain general requirements applicable to regulations, standards, effluent limitations, plans and programs. More specific requirements applicable in specific areas are contained in existing regulations on public information (Part 2 of this chapter) and in other regulations that have been or will be issued pertaining to various specific programs under the Act, as well as State and local laws pertinent to the subject.

§ 105.2 Policy and objectives.

The opportunity for participation of the public is to be provided to the fullest extent practicable, consistent with other requirements of the Act, in Federal and State government water pollution control activities. The major objectives of such participation include greater responsiveness of governmental actions to public concerns and priorities, and improved popular understanding of official programs and actions. Although the primary responsibility for water quality decision-making is vested by law in public agencies at the various levels of government, active public involvement in and scrutiny of the intergovernmental decision-making process is essential to accomplish these objectives. Conferring with the public after an agency decision has been made will not meet the requirements of this part. The intent of these regulations is to foster a spirit of openness and a sense of mutual trust between the public and the State and Federal agencies in efforts to restore and maintain the integrity of the Nation's waters.

§ 105.3 Required program and reports.

Each agency cited in § 105.1 carrying out activities under the Act shall provide for and conduct a continuing program for public participation comprising substantially the elements listed in § 105.4. Staff responsibility and budgetary provisions shall be identified for such program in the annual State program submission under section 106 of the Act. Public participation activities shall be reported on annually and in relation to certain documents and actions as called for in § 105.5.

§ 105.4 Guidelines for Agency programs.

The continuing agency program for public participation shall contain mechanisms or activity for each of the elements listed in this section. The exact mechanism and extent of activity may vary in relation to resources available, public response, and the nature of issues involved.

(a) *Informational materials.* Each agency shall provide continuing policy, program, and technical information in forms and at times and places useful to interested or affected persons and organizations so that they can make informed and constructive contributions to governmental decisionmaking. News releases, newsletters, and other publications may be used for this purpose. Special efforts shall be made to summarize complex technical materials for public and media use.

(b) *Assistance to public.* Each agency shall have an arrangement for providing, insofar as possible, technical and informational assistance to public groups for citizen education, community workshops, training, and dissemination of relavant information to communities.

(c) *Consultation.* Each agency shall have standing arrangements for early consultation and exchange of views with interested or affected persons and organizations on development or revision of plans, programs, or other significant actions. Advisory groups, ad hoc committees, or workshop meetings may serve this purpose.

(d) *Notification.* Each agency, for its appropriate geographic area, shall develop and maintain a current list of interested persons and organizations, including any who ask to be on such list, for the periodic distribution of materials in paragraph (a) of this section. Legislators and other public officials shall be included. Each agency shall additionally comply, in connection with any public hearing or other proposed action, with any formal or specific requirements for public notice called for in the Act or in other regulations, to be supplemented wherever possible with informal notice to all interested persons or organizations having requested in advance such notice.

(e) *Access to information.* Each agency shall provide, either directly or through others, in an appropriate location, a central public collection or depository of water quality reports and data pertinent to the geographic area of the agency. Materials available for public reference shall include grant and permit applications, permits, effluent discharge information, compliance schedule reports and materials specified in section 308(b) of the Act. Copying facilities at reasonable cost shall be available.

(f) *Enforcement.* Each agency shall develop internal procedures for receiving and insuring proper consideration of information and evidence submitted by citizens. Public effort in reporting violations shall not be discouraged.

(g) *Legal proceedings.* Each agency shall provide full and open information on legal proceedings under the Act, to the extent not inconsistent with court requirements, and where such disclosure would not prejudice the conduct of the litigation.

(h) *Rule making.* In addition to providing an opportunity for public hearings on proposed regulations, where appropriate or required under applicable statutes and regulations, agencies shall

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ordinarily invite, receive, and consider comments in writing from any interested or affected persons and organizations. All such comments shall be part of the public record, and a single copy of each comment shall be routinely available for public inspection. Notices of proposed rule making, as well as final rules and regulations, shall be distributed to interested or affected persons and organizations as quickly as possible after publication.

(f) *Other measures.* The listing of specific measures in this section shall not preclude additional techniques for obtaining, encouraging, or assisting public participation.

§ 105.5 Guidelines for reporting.

The annual report of each EPA unit or office, and the annual State program submission under section 106 of the Act as required under Part 35 of this chapter, shall include a general description of public participation provisions and activities. In addition, and in order that the public and reviewing or approving officials may be fully aware of the actual extent of public input and involvement, a "Summary of Public Participation" related to particular actions or documents shall be presented as follows:

(a) In the case of regulations, standards and, effluent limitations required to be published by the Administrator in the FEDERAL REGISTER or required to be published by a State agency in an official form, the Summary of Public Participation shall be published as part of the introductory material.

(b) In the case of statewide or areawide plans or portions thereof (including the continuing planning process under section 303(e) of the Act and plans developed under such process), or comparable matters required to be approved by the Administrator, the Summary of Public Participation shall be submitted as a part of the plan or of the public transmittal document.

(c) In the case of applications for grants for construction projects other than those under section 206 of the Act, or for planning or annual program grants (including grants under sections 102(c), 106, and 208 of the Act), the Summary of Public Participation shall be a part of the application.

(d) Each Summary of Public Participation shall describe the measures taken by the agency to provide for, encourage, and assist public participation in relation to the matter; the public response to such measures; and the disposition of significant points raised.

§ 105.6 Guidelines for evaluation.

The Administrator or other approving official shall review and evaluate each Summary of Public Participation in relation to the matter submitted. He may call for additional information, or for the records of meetings or hearings. If he finds that there has been inadequate public participation on the matter, he shall take measures, or require the sponsoring agency to take measures, to obtain additional public participation, prior to final action. In evaluation of the Summary of Public Participation, factors such as, but not limited to, the following shall be considered:

(a) Is the extent of public participation realized in reasonable scale with the significance of the matter?

(b) Has a suitable effort been made to seek out and involve the interested public both at the preliminary stage and during development of the matter?

(c) Have the measures taken been such as to facilitate rather than inhibit public understanding of and contribution to resolving the matter?

(d) Has adequate information been provided and has enough time been allowed for public understanding and response?

(e) Are there unusual time, cost, or technical constraints affecting public participation?

(f) Are there unresolved conflicts between the public and the agency remaining or anticipated?

(g) Have all foreseeable affected interests been given the opportunity for public participation?

§ 105.7 Guidelines for public hearings.

Any public hearing, whether mandatory or discretionary, to be held under the Act shall be in conformity with this section. If conflict exists between the minimum guidelines of this section and requirements of State or Federal law or other regulations pertaining to a particular hearing, the more stringent requirements shall be observed.

(a) *Purpose.* Generally, a public hearing gives persons and organizations a formal opportunity to be recorded on a matter prior to decisionmaking. Although public hearing testimony may focus on the prospective action to be taken, in the form of a tentative plan or decision, the final action shall benefit from and reflect consideration of the public hearing content.

(b) *Public meetings.* Formal public hearings are often not the best means of public participation. Agencies are encouraged to hold public meetings or workshops, jointly where feasible, on significant matters or proposed actions. Such meetings shall not supplant public hearings when such are required, and shall be informational in nature with opportunity for public response.

(c) *Discretionary hearings.* Where the opportunity for public hearing is called for in the Act, and in other appropriate instances, a public hearing shall ordinarily be held if requested by interested or affected parties or if the hearing official finds sufficient public interest or pertinent information to be gained.

(d) *Hearing notices.* In addition to any other formal legal requirements, a notice of each hearing or public meeting shall be well publicized and be mailed to interested or affected persons and organizations as soon as the hearing is scheduled by the agency and at least 30 days before the hearing or meeting is to take place.

(e) *Location and time.* In determining the locations and times for hearings, consideration shall be given to easing travel hardship and to facilitating attendance and testimony by a cross-section of interested or affected persons and organizations. Accessibility of hearing sites by public transportation shall be considered.

(f) *Documents.* Reports, documents and data to be discussed at the public hearing shall be available to the public at the hearing location, for a reasonable time prior to the hearing. For complex matters, a fact sheet outlining major issues, tentative staff determinations if appropriate, bibliography, and procedures for obtaining further information, for requesting a public hearing, and for other appropriate actions shall be prepared and its availability made known in the notice called for in paragraph (d) of this section.

(g) *Agenda.* The elements of the public hearing, proposed time schedule, and any constraints on statements shall be specified in the notice of the hearing.

(h) *Scheduling.* Witnesses shall be scheduled in advance in order to ensure maximum participation and allotment of adequate time for testimony, provided that such scheduling is not used as a bar to unscheduled testimony. Blocks of time shall be scheduled for major categories of witnesses. Evening and weekend schedules shall be considered.

(i) *Statements.* Public hearing procedures shall not inhibit free expression of views by requirements of more than one legible copy of any statement submitted, or for qualification of witnesses beyond that needed for identification.

(j) *Records.* Public hearing proceedings shall be promptly summarized, reproduced and copies made available to the public at cost. The record shall be held open for a reasonable time to receive supplementary statements.

§ 105.8 Coordination and nonduplication.

Public participation activities and materials required under the Federal Water Pollution Control Act or these regulations may be combined with related programs or activities of the agencies concerned, wherever such combination will enhance the economy, the effectiveness, or the timeliness of the effort, enhance the clarity of the issue and not be detrimental to participation by the widest possible public. Hearings and meetings may be held jointly by more than one agency or may deal with more than one related matter, where such procedure does not conflict with other provisions. Interstate agencies particularly are encouraged to develop combined proceedings with the States concerned.

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PART I

(Part II begins on page 5385)



CONSTRUCTION GRANTS—EPA procedures applicable to wastewater treatment for FY 1973; effective 2–28–73..... 5329

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Rules and Regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER D—GRANTS

PART 35—STATE AND LOCAL ASSISTANCE

Grants for Construction of Treatment Works

The Federal Water Pollution Control Act Amendments of 1972 authorize the award of construction grants for waste treatment works which constitute a contractual obligation of the United States for payment of the Federal share of the construction costs of such projects. Regulations to implement this grant/contract authority are hereby promulgated.

Previous construction grant regulations (40 CFR 35.800 et seq.) are applicable to previously awarded construction grants and will remain in effect. The new regulations hereby promulgated establish policies and procedures applicable only to construction grant awards from fiscal year 1973 and later contractual obligation authority.

A summary of the grant process for contract authority grants is contained within the regulations (40 CFR 35.903). While new procedures and requirements are established pursuant to title II of the new statute, an effort has been made to conform the new grant system to the former method of awarding grants to provide for as smooth a transition as possible and also to permit funding without delay of meritorious applications already forwarded to State and EPA Regional Offices.

Section 201(g)(3) of the new Act requires that no grant be awarded after July 1, 1973 unless the applicant satisfactorily demonstrates that the sewer collection system discharging into the works is not subject to excessive infiltration and section 201(g)(4) authorizes Federal assistance for sewer system evaluation studies necessary to determine whether there is excessive infiltration. Procedures to permit Federal assistance under these requirements as a part of the usual construction grant process are incorporated in these regulations and will be applicable to grants awarded after June 30, 1973.

Separate regulations will be promulgated to implement the provisions of section 208 of the Federal Water Pollution Control Act Amendments of 1972.

Interested parties are encouraged to submit written comments, views, or data concerning the interim regulations promulgated hereby to the Director, Grants Administration Division, Environmental Protection Agency, Washington, D.C. 20460. All such submissions received on or before April 30, 1973 will be considered prior to promulgation of final construction grant regulations. Suggestions for changes to EPA regulations promulgated in this Subchapter are solicited on a continuous basis pursuant to 40 CFR 30.106.

Effective date. The interim construction grant regulations promulgated hereby shall become effective on February 28, 1973. All Environmental Protection Agency contract grant authority construction grants pursuant to Public Law 92-500 shall be subject to these interim grant regulations. It is necessary that these regulations take effect prior to a 30-day period after promulgation because of the necessity to expedite award of construction grants in order to meet water quality requirements.

WILLIAM D. RUCKELSHAUS,
Administrator.

FEBRUARY 23, 1973.

Part 35 of title 40 is amended by reserving Subpart D and adding Subpart E which contains the material formerly codified as Subpart D (37 FR 26282, Dec. 8, 1972).

Subpart D—[Reserved]

Subpart E—Grants for Construction of Treatment Works—Federal Water Pollution Control Act Amendments of 1972

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AUTHORITY: Secs. 201 through 205, 207, 210 through 212, and 501(a) of the Act.

Subpart D—[Reserved]

Subpart E—Grants for Construction of Treatment Works—Federal Water Pollution Control Act Amendments of 1972

§ 35.900 Purpose.

This subpart supplements the EPA general grant regulations and procedures (Part 30 of this chapter) and established policies and procedures for grants to assist the construction of publicly owned waste treatment works in compliance with the Federal Water Pollution Control Act.

§ 35.901 Authority.

This subpart is promulgated pursuant to sections 201 through 205, 207, 210 through 212, and 501(a) of the Act.

§ 35.903 Summary of construction grant program.

(a) The construction of federally financed waste treatment works generally is accomplished in three steps—(1) preliminary plans and studies, (2) preparation of construction drawings and specifications, and (3) fabrication and build-

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ing of a complete and operable treatment works. Although in most cases completion of preliminary plans and studies will be a prerequisite to award of a grant, in order to allow State and Federal officials an adequate basis to determine the merits of proposed projects, the EPA Regional Administrator may award a grant for completion of preliminary plans and studies (the first step). A grant for a project will include an initial payment for the Federal share of the unreimbursed allowable costs of completed work (e.g. preliminary plans and studies, preparation of final construction drawings and specifications), if such prior costs are within the scope of the proposed project and the grant amount certified by the State agency. In no case may a grant be awarded unless the proposed project has received a priority certification which accords with an approved State system for determining the priority of needed treatment works.

(b) The scope of a project may include one or more construction steps and will be determined by the definition of the project in the grant application submitted to the State agency, by the scope of the project for which State priority certification is given, and finally by the scope of the project for which the Regional Administrator awards a grant. Funding of a complete treatment works may (but need not) be "split" into a project or grant for each step. The State is responsible for determining the amount and timing of Federal assistance to each municipality for which treatment works funding is needed.

(c) Upon award of a grant under this subpart, the grantee may submit a request for payment for the unpaid Federal share of allowable project costs incurred prior to the award, and the grant shall constitute a contractual obligation of the United States to pay the Federal share of allowable project costs up to the amount approved in the grant agreement (including amendments).

(d) No grant may be awarded under this subpart for a project for the building and erection of a treatment works (Step 3) if initiation of the project construction has occurred, that is, if a notice to proceed has been issued under a construction contract for any portion of the project work or, if notice to proceed is not required, if the construction contract has been executed.

(e) Applications for grants and grant amendments must first be submitted to the State agency, and the State agency may then forward to the appropriate EPA Regional Administrator complete project applications or grant amendments which have been certified by the State agency as entitled to priority.

(f) Sewage collection systems for new communities, new subdivisions, or newly developed urban areas must be addressed in the planning of such areas and must be included as a part of the development costs of the new construction in these areas; they are not to be covered under the construction grant program.

§ 35.905 Definitions.

As used in this subpart, the following words and terms shall have the meaning set forth below:

§ 35.905–1 The Act.

The Federal Water Pollution Control Act, as amended by the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92-500).

§ 35.905–2 Combined sewer.

A sewer intended to serve as a sanitary sewer and a storm sewer.

§ 35.905–3 Construction.

Any one or more of the following: Preliminary planning to determine the feasibility of treatment works, engineering, architectural, legal, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures or other necessary actions, erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works, or the inspection or supervision of any of the foregoing items. The phrase "initiation of construction," as used in this subpart, means the issuance of a notice to proceed, or, if none is required, the execution of a construction contract.

§ 35.905–4 Excessive infiltration/inflow.

The quantities of infiltration/inflow which can be economically eliminated from a sewer system by rehabilitation, as determined by a cost-effectiveness analysis that (for the design life of the treatment works) compares correcting the infiltration/inflow conditions with increasing the treatment works capacity to provide the required waste water treatment for the quantities of infiltration/inflow.

§ 35.905–5 Infiltration.

The water entering a sewer system and service connections from the ground, through such means as, but not limited to, defective pipes, pipe joints, connections, or manhole walls. Infiltration does not include, and is distinguished from, inflow.

§ 35.905–6 Inflow.

The water discharged into a sewer system and service connections from such sources as, but not limited to, roof leaders, cellar, yard, and area drains, foundation drains, cooling water discharges, drains from springs and swampy areas, manhole covers, cross connections from storm sewers and combined sewers, catch basins, storm waters, surface run-off, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration.

§ 35.905–7 Infiltration/inflow.

The total quantity of water from both infiltration and inflow without distinguishing the source.

§ 35.905–8 Interstate agency.

An agency of two or more States established by or pursuant to an agreement or compact approved by the Congress, or any other agency of two or more States, having substantial powers or duties pertaining to the control of water pollution.

§ 35.905–9 Municipality.

A city, town, borough, county, parish, district (but excluding a school district), association, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created by or pursuant to State law, or an Indian tribe or an authorized Indian tribal organization, having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or a designated and approved management agency under section 208 of the act.

§ 35.905–10 Project.

The scope of work for which Federal assistance is awarded by a grant pursuant to this Subpart.

§ 35.905–11 Sanitary sewer.

A sewer intended to carry only sanitary and industrial waste waters from residences, commercial buildings, industrial plants, and institutions.

§ 35.905–12 State.

A State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

§ 35.905–13 State agency.

The State water pollution control agency designated by the Governor having responsibility for enforcing State laws relating to the abatement of pollution.

§ 35.905–14 Storm sewer.

A sewer intended to carry only storm waters, surface run-off, street wash waters, and drainage.

§ 35.905–15 Treatment works.

Any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature to implement section 201 of the act, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment; or any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water run-off, or industrial waste, including waste in combined storm water and sanitary sewer systems.

§ 35.908 Advanced technology and accelerated construction techniques.

It is the policy of the Environmental Protection Agency to encourage and,

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where possible, to assist in the development of advanced technology and accelerated construction techniques for the construction of waste treatment works. New technology may be developed or demonstrated with the assistance of EPA research or demonstration grants awarded under title I of the act. New technology which has been successfully demonstrated under comparable conditions may be utilized in the construction of treatment works under this subpart. In addition, the Regional Administrator, with the concurrence of the appropriate Assistant Administrator(s), may award a comprehensive grant (§ 30.205 of this chapter) to include the application or demonstration of new technology assisted under title I of the act in any portion of a treatment works constructed principally with assistance under this subpart, pursuant to this subchapter and such conditions and procedures for EPA assistance as the Director, Grants Administration Division, may approve.

§ 35.910 Allocation of funds.

§ 35.910–1 Allotment.

(a) The Administrator shall allot among the States, funds authorized to be appropriated pursuant to section 207, in the ratio that the estimated cost of constructing all needed publicly owned treatment works in each State bears to the estimated cost of construction of all needed publicly owned treatment works in all of the States. For fiscal years ending June 30, 1973, and June 30, 1974, sums not to exceed $2 billion and $3 billion, respectively, have been determined to be the actual amounts authorized to be appropriated within the corresponding maximum amounts specified in section 207 and will be allotted on a ratio determined on the basis of Table III of House Public Works Committee Print No. 92–50. Computation of a State's ratio shall be carried out to the nearest ten-thousandth percent (0.0001 percent) and allotted amounts will be rounded to the nearest thousand dollars. The applicable percentages to be used in computing State allotments for fiscal years 1973 and 1974 are as follows:

State	Percentage
Alabama	.3612
Alaska	.2252
Arizona	.1346
Arkansas	.3536
California	9.8176
Colorado	.3166
Connecticut	1.6810
Delaware	.6565
District of Columbia	.7114
Florida	3.6264
Georgia	.9730
Hawaii	.3303
Idaho	.2177
Illinois	6.2489
Indiana	3.3692
Iowa	1.1557
Kansas	.3742
Kentucky	.6599
Louisiana	.9428
Maine	.9675
Maryland	4.2582
Massachusetts	3.7576
Michigan	7.9814
Minnesota	2.0319
Mississippi	.3935
Missouri	1.6556
Montana	.1662
Nebraska	.3708
Nevada	.2877
New Hampshire	.8309
New Jersey	7.7040
New Mexico	.2108
New York	11.0578
North Carolina	.9229
North Dakota	.0467
Ohio	5.7737
Oklahoma	.4608
Oregon	.8494
Pennsylvania	5.4214
Rhode Island	.4889
South Carolina	.6455
South Dakota	.0948
Tennessee	1.1605
Texas	2.7694
Utah	.1408
Vermont	.2218
Virginia	2.9143
Washington	.8906
West Virginia	.4999
Wisconsin	1.7415
Wyoming	.0263
Guam	.0872
Puerto Rico	.8845
Virgin Islands	.0893
American Samoa	.0048
Trust Territory of Pacific	.0378
	100.0000

(b) Based upon the applicable percentages, the sums allotted to the States for fiscal years 1973 and 1974 are as follows:

State	Fiscal year 1973	Fiscal year 1974
Alabama	7,224,000	10,836,000
Alaska	4,504,000	6,756,000
Arizona	2,692,000	4,038,000
Arkansas	7,072,000	10,608,000
California	196,352,000	294,528,000
Colorado	6,332,000	9,498,000
Connecticut	33,620,000	50,430,000
Delaware	13,130,000	19,695,000
District of Columbia	14,228,000	21,342,000
Florida	72,528,000	108,792,000
Georgia	19,460,000	29,190,000
Hawaii	6,606,000	9,909,000
Idaho	4,354,000	6,531,000
Illinois	124,978,000	187,467,000
Indiana	67,324,000	100,986,000
Iowa	23,114,000	34,671,000
Kansas	7,484,000	11,226,000
Kentucky	13,198,000	19,797,000
Louisiana	18,856,000	28,284,000
Maine	19,350,000	29,025,000
Maryland	85,164,000	127,746,000
Massachusetts	75,152,000	112,728,000
Michigan	159,628,000	239,442,000
Minnesota	40,638,000	60,957,000
Mississippi	7,870,000	11,805,000
Missouri	33,112,000	49,668,000
Montana	3,324,000	4,986,000
Nebraska	7,416,000	11,124,000
Nevada	5,754,000	8,631,000
New Hampshire	16,618,000	24,927,000
New Jersey	154,080,000	231,120,000
New Mexico	4,216,000	6,324,000
New York	221,156,000	331,734,000
North Carolina	18,458,000	27,687,000
North Dakota	934,000	1,401,000
Ohio	115,474,000	173,211,000
Oklahoma	9,216,000	13,824,000
Oregon	16,968,000	25,482,000
Pennsylvania	108,428,000	162,642,000
Rhode Island	9,778,000	14,667,000
South Carolina	12,910,000	19,365,000
South Dakota	1,896,000	2,844,000
Tennessee	23,210,000	34,815,000
Texas	55,388,000	83,082,000
Utah	2,816,000	4,224,000
Vermont	4,436,000	6,654,000
Virginia	58,286,000	87,429,000
Washington	17,812,000	26,718,000
West Virginia	9,996,000	14,997,000
Wisconsin	34,830,000	52,245,000
Wyoming	536,000	804,000
Guam	1,744,000	2,616,000
Puerto Rico	17,690,000	26,535,000
Virgin Islands	1,786,000	2,679,000
American Samoa	96,000	144,000
Trust Territory of Pacific	756,000	1,134,000
Total	2,000,000,000	3,000,000,000

(c) Allotments for fiscal years which begin after the fiscal year ending June 30, 1974, shall be made only in accordance with a revised cost estimate required to be submitted to and approved by Congress.

(d) Allotments shall be made not later than the January first preceding the beginning of the fiscal year for which authorized, except for the allotment for fiscal year 1973 which is made herein.

§ 35.910–2 Reallotment.

(a) Sums allotted to a State under § 35.910–1 shall be available for obligation on and after the date of such allotment and shall continue to be available to such State for a period of 1 year after the close of the fiscal year for which such sums are authorized. Funds remaining unobligated at the end of the allotment period will be immediately reallotted by the Administrator, generally on the basis of the ratio used in making the last allotment.

(b) Any sums which have been obligated under section 203 of the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92–500) and which are released by the payment of the final voucher for the project shall be immediately credited to the State to which such sums were last allotted. Such released sums shall be added to the amounts last allotted to such State and shall be immediately available for obligation in the same manner and to the same extent as such last allotment.

(c) Reallotted sums shall be added to the last allotments made to the States and shall be in addition to any other funds otherwise allotted.

§ 35.915 State determination and certification of project priority.

Construction grants will be awarded from allotments available pursuant to § 35.910 in accordance with a State system for the certification of priority for construction grant projects.

(a) *State priority system.* Each State agency must submit for the approval of the Regional Administrator a description of the State priority system, including the criteria used by the State in determining priority for construction grant projects. The Regional Administrator shall be notified of each significant revision to an approved State priority system no later than 30 days prior to the effective date of the revision. The Regional Administrator may disapprove the State priority system or any revision thereto, provided that he shall first notify the State in writing of the specific respects in which he has determined that the system, or the administration thereof, fails to meet the applicable requirements of sections 301 and 302 of the Act.

(b) *List of municipalities.* The State agency shall prepare, in accordance with the approved State priority system, a list of municipalities, consisting of an inventory and ranking, in order of priority, of municipalities not meeting applicable requirements of sections 301 and 302 of the Act, and must submit such listing to the Regional Administrator prior to the award of a grant for any project after

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June 30, 1973: *Provided,* (1) That the Regional Administrator may approve the list included with the annual State program plan submission (Part 35, Subpart B of this part); and (2) notwithstanding the foregoing, the Regional Administrator shall approve the list, or any portion thereof, which is prepared in accordance with any State plan approved pursuant to section 303(e)(3)(H) of the act for the certification of projects after the date of approval of such plan.

(c) *Project list.* The State agency shall submit for the approval of the Regional Administrator a listing of all projects for which Federal assistance will be requested, from current allotments, the priority for which shall be derived from the list of municipalities. Such project list shall set forth a tabulation of funding priorities and requirements including, as a minimum, the following information for each project: (1) Name of municipality; (2) brief description of type of project and anticipated scope of project; (3) the estimated total project cost; (4) estimated dates of initiation and completion of preliminary plans and studies; (5) estimated dates of completion of construction drawings and specifications; (6) estimated dates of initiation and completion of building and erection; and (7) estimated amount of EPA assistance required to complete the project, including identification of the 6-month period (July 1–December 31, January 1–June 30) when a grant award will be required. Such project list shall be submitted for the approval of the Regional Administrator annually as part of the State program submission pursuant to Part 35, Subpart B of this part, and may be revised as necessary, with the approval of the Regional Administrator upon compliance with the public participation requirements of paragraph (e) of this section: *Provided,* That the State agency may elect to rely upon the 1-year list submitted in accordance with § 35.575(f) to satisfy the foregoing project list requirements with respect to grants awarded prior to July 1, 1973.

(d) *State priority certification for projects.* The State agency must forward with each application submitted to the Regional Administrator a certification that the proposed project is entitled to priority in accordance with the State priority system, and requires the specified funding requested from allotments currently available. The State agency is responsible for defining the scope of treatment works projects and determining the time when such projects are to receive Federal financial assistance.

(e) *Public participation.* The Regional Administrator may not approve a State priority system or revision thereof in effect after June 30, 1973, unless he determines that the State agency has afforded adequate opportunity for oral or written municipal and public comment upon the State priority system, the list of municipalities, and the project list, or revisions, prior to submission to the Regional Administrator.

§ 35.920 Grant application.

Grant applications will be submitted and evaluated in accordance with Part 30, Subpart B of this chapter.

§ 35.920–1 Eligibility.

Municipalities, intermunicipal agencies, States, or interstate agencies may apply for grants.

§ 35.920–2 Procedure.

Preapplication assistance, including, where appropriate, a preapplication conference, may be requested from the appropriate EPA Regional Office. An application must be submitted to the State agency for each proposed project. The State agency will submit to the Regional Administrator those applications for construction grants which are complete and which relate to projects which have received priority certification in accordance with § 35.915.

§ 35.920–3 Contents of application.

(a) *Project for preliminary plans and studies (Step 1).* An application for a grant for preliminary plans and studies shall include but not be limited to:

(1) State priority certification in accordance with § 35.915;

(2) A brief description of the nature and scope of the proposed project;

(3) Required comments or approvals of relevant State, local, and Federal agencies (including "clearinghouse" requirements of OMB Circular A–95);

(4) An estimate of the proposed project cost; and

(5) Proposed subagreements, or an explanation of the intended method of awarding subagreements for performance of any substantial portion of the project work.

(b) *Project for preparation of construction drawings and specifications (Step 2).* An application for a grant for preparation of construction drawings and specifications shall include but not be limited to:

(1) State priority certification in accordance with § 35.915;

(2) Sewer system evaluation in accordance with § 35.927;

(3) Feasibility report;

(4) Engineering report, including, but not limited to:

(i) Facility design data incorporating:

(*a*) Results of sewer system evaluation;

(*b*) Estimated effluent quality, with respect to all parameters required by applicable effluent limitations and water quality standards; and

(*c*) Proposed method for ultimate disposal of sludge.

(ii) Cost estimates for design and construction; and

(iii) Schedule for completion of design and construction.

(5) Description of proposed user charge system in accordance with § 35.928;

(6) Statement regarding availability of proposed site, if relevant;

(7) Statement regarding ability of applicant to obtain discharge permit for proposed facility;

(8) Required comments or approvals of relevant State, local, and Federal agencies (including compliance with "clearinghouse" requirements of OMB Circular A–95);

(9) Environmental assessment, in accordance with Part 6 of this chapter unless the Regional Administrator determines, at the request of the applicant, that there is insufficient data available to prepare such assessment, provided that the environmental assessment must then be submitted to the Regional Administrator at or prior to the time of submission of plans and specifications for the building and erection of a treatment works;

(10) Statement regardng the applicant's financial, legal, institutional, and managerial capabilities to insure the construction, operation, and maintenance of the treatment works;

(11) Statement regarding compliance with other applicable Federal statutory and regulatory requirements (see 40 CFR Part 30, Subpart C);

(12) Statement regarding compliance with title VI of Civil Rights Act of 1964;

(13) Statement regarding applicant's proposed operation and maintenance program;

(14) Proposed subagreements, or an explanation of the intended method of awarding subagreements for performance of any substantial portion of the project work.

(c) *Project for building and erection of a treatment works (Step 3).* An application for a grant for the building and erection of a treatment works shall include the items in paragraph (b) of this section, and in addition shall include two complete sets of the construction drawings and specifications, suitable for bidding purposes: *Provided,* That if any such information has been furnished with an earlier application, the applicant need only incorporate by reference and update or revise such information.

(d) *Design/construct project.* An application for a grant for a design/construct project shall include the items in paragraphs (b) and (c) of this section, except that, in lieu of construction drawings and specifications, the proposed performance specifications and other relevant design/construct criteria for the project shall be submitted.

§ 35.925 Limitations on award.

Before approving a grant for any project for any treatment works, the Regional Administrator shall determine:

§ 35.925–1 Facility planning.

That a current basin plan and regional or metropolitan plan as required in accordance with §§ 35.150–1 and 35.150–2 have been adopted (facility planning requirements will be an eligible construction grants cost as provided for in §§ 35.905–3 and 35.940–1(d)).

§ 35.925–2 State plan.

That such works are in conformity with any applicable State plan approved in accordance with section 303(e) of the act.

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§ 35.925–3 Priority certification.

That such works have been certified by the State agency as entitled to priority in accordance with § 35.915, and that the award of a grant for the proposed project will not jeopardize the funding of any treatment works of higher priority.

§ 35.925–4 State allocation.

That the award of the grant will not result in the total of all grants awarded to applicants of a State, including grant increases, to exceed the total of all allotments and reallotments available to such State pursuant to § 35.910.

§ 35.925–5 Applicant's funding capability.

That the applicant has agreed to pay the non-Federal project costs.

§ 35.925–6 Permits.

That the applicant has provided assurance acceptable to the Regional Administrator that any necessary discharge permit has been or will be obtained in accordance with section 402 of the act.

§ 35.925–7 Design.

If the application is for a project which includes the building and erection of a treatment works (Step 3),

(a) That the design, size, and capacity of such works are cost effective and relate directly to the needs to be served by such works, including adequate reserve capacity;

(b) That such works will meet applicable effluent limitations and applicable water quality standards and attain not less than secondary treatment as defined by the Administrator pursuant to section 301(b)(1)(B) and 304(d)(1) of the act;

(c) That alternative waste treatment techniques have been studied and evaluated;

(d) And, if the grant is to be awarded from funds authorized for any fiscal year beginning after June 30, 1974, that such works will provide for the application of the best practicable waste treatment technology over the life of the works consistent with the purposes of title II of the act;

(e) And, if the grant is to be awarded after July 1, 1973, that each sewer system, including interceptor and collection sewers, discharging into such treatment works is not subject to excessive infiltration/inflow, in accordance with § 35.927; and

(f) That the design for the project meets or exceeds such guidelines as the Administrator has published concerning treatment works design.

§ 35.925–8 Environmental review.

That the applicant has complied with applicable NEPA requirements (Part 6 of this chapter).

§ 35.925–9 Civil rights.

That the applicant has complied with the applicable requirements of title VI of the Civil Rights Act of 1964.

§ 35.925–10 Operation and maintenance program.

That the applicant has made satisfactory provision for assuring proper and efficient operation and maintenance of the treatment works, including the employment of trained management and operations personnel.

§ 35.925–11 User charge system.

That, prior to award of any grant after March 1, 1973, for a project which includes the building and erection of a treatment works (Step 3) the applicant (a) has adopted or will adopt a system of charges to assure that each recipient of waste treatment service will pay its proportionate share of the costs of operation and maintenance (including replacement); (b) has received firm written commitments satisfactory to the Regional Administrator for the payment to such applicant by the industrial users for their proportionate share of the Federal share of capital costs of the project allocable to the treatment of such industrial wastes to the extent attributable to the Federal share of the cost of construction; and (c) has legal, institutional, managerial, and financial capability to insure adequate construction, operation and maintenance of treatment works throughout the applicant's jurisdiction. Grants awarded prior to March 2, 1973, are subject to § 35.835–5 requirements in lieu of the above.

§ 35.925–12 Sewage collection systems.

That, if the project is for, or includes, sewage collection system work, such work is for replacement or major rehabilitation of an existing sewer system and is necessary to the total integrity and performance of the waste treatment works servicing such community, or is for a new sewer system in a community in existence on October 18, 1972, with sufficient existing or planned capacity to adequately treat such collected sewage.

§ 35.925–13 Alternative techniques and technology.

That, for grants made from fiscal year 1975 or later funds, for the erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works, the applicant (a) has studied and evaluated alternative waste management techniques to insure that the proposed works will provide for the application of the best practicable waste treatment technology over the life of the works; and (b) has, as appropriate, taken into account and allowed to the extent practicable for the application of technology, at a later date, which will provide for the reclaiming or recycling of water or otherwise eliminate the discharge of pollutants.

§ 35.927 Sewer system evaluation.

Applicants for grants awarded after July 1, 1973, must demonstrate to the satisfaction of the Regional Administrator that each sewer system discharging into such treatment works is not subject to excessive infiltration/inflow, through an infiltration/inflow analysis and where appropriate and approved by the Regional Administrator, a sewer system evaluation survey.

(a) *Infiltration/inflow analysis.* Each applicant for a grant must show that it has performed or will perform, in conjunction with preliminary plans and studies (Step 1), and analysis demonstrating the existence or nonexistence of excessive infiltration/inflow in each sewer system tributary to the treatment works. The analysis shall identify the presence, quantity, and type of infiltration/inflow conditions which exist in the sewer systems. Information to be obtained and evaluated in the analysis shall include but not necessarily be limited to the following:

(1) Flow data for all flows in the sewer system including overflows and bypassed flows.

(2) Location, frequency, and cause of overflow conditions in the collection/treatment system caused by infiltration/inflow.

(3) Relationships of existing population and industrial contribution to flows in the sewer system.

(4) Geographical and geological conditions which may affect the present and future quantities or correction costs of the infiltration/inflow.

(5) A general discussion of age, length, type, materials of construction, and known physical condition of the sewer system.

For determination of possible excessive infiltration/inflow in the analysis, preliminary estimates shall be developed of the relative costs (for the design life of the treatment works), both for correcting the infiltration/inflow conditions, and increasing the treatment works capacity to provide the required degree of waste water treatment for the quantities of infiltration/inflow.

(b) *Sewer system evaluation survey.* If the infiltration/inflow analysis demonstrates that the sewer system may be subject to excessive infiltration/inflow, the analysis and a detailed plan for a systematic sewer system evaluation survey, which elucidates the tasks to be performed and the estimated costs, shall be submitted to the Regional Administrator.

(1) Upon approval of the survey proposal by the Regional Administrator, the grantee shall conduct the sewer system evaluation survey, which shall be a systematic examination of the sewer systems to determine the location, flow rate and cost of correction for each definable element of the total infiltration/inflow problem. The sewer system evaluation survey shall normally be completed prior to establishment of facility design data for the engineering report. The evaluation survey shall be conducted in accordance with such guidelines as the Administrator shall publish from time to time.

(2) The sewer system evaluation survey report shall state the specific location, condition, estimate of rate of flow and cost of rehabilitation for each defined element of infiltration/inflow

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into the sewer system. The report shall summarize the quantities of defined infiltration/inflow and propose a program of rehabilitation to correct the excessive infiltration/inflow. The rehabilitation program for the sewer system shall be accomplished on a selective cost-effective basis for each defined element of infiltration/inflow.

(3) The sewer system evaluation survey report and rehabilitation program for the sewer system shall be submitted to the Regional Administrator for approval prior to initiation of construction for Step 3.

(c) *Sewer use ordinance.* Each applicant for a treatment works grant shall demonstrate to the satisfaction of the Regional Administrator that a sewer use ordinance or other legally binding requirement shall be enacted and enforced in each jurisdiction served by the treatment works before the completion of construction. The ordinance shall prohibit any new connections from inflow sources into the sanitary sewer portions of the sewer system and shall require that new sewers and connections from waste water sources to the sewer system are designed and constructed in accordance with such guidelines as the Administrator may publish from time to time.

(d) *Force account and survey equipment costs.* Reasonable force account and equipment purchases or rental costs for all or part of a sewer system evaluation survey conducted by an applicant in accordance with § 35.927(b) will be allowable costs if the Regional Administrator has given prior approval for the use of such forces and equipment.

(1) The applicant must demonstrate to the satisfaction of the Regional Administrator the necessary technical competence required to conduct all or part of the evaluation survey. The applicant must also demonstrate that the use of force account and purchased or rented survey equipment will be the most economical method of conducting the evaluation survey.

§ 35.928 User charge system. [Reserved]

§ 35.930 Grant award.

Approval by the Regional Administrator of an application shall constitute a grant award for the project, and shall constitute a contractual obligation of the United States for the payment of the Federal share of the allowable project costs, as determined by the Regional Administrator, subject to execution of a grant agreement in accordance with § 30.305–2.

§ 35.930–1 Types of grants.

(a) The Regional Administrator may award a grant for the following types of projects pursuant to § 35.925:

(1) Preliminary plans and studies (Step 1): *Provided*, That he determines that the applicant has submitted the items required pursuant to § 35.920–3(a) and the State agency has determined that the applicant is unable to complete the necessary preliminary plans and studies without Federal assistance;

(2) Preparation of construction drawings and specifications (Step 2): *Provided*, That he determines that the applicant has satisfactorily completed appropriate preliminary plans and studies and has submitted the items required pursuant to § 35.920–3(b);

(3) Building and erection of a treatment works (Step 3): *Provided*, That he determines that the applicant has satisfactorily completed appropriate preliminary plans and studies and has submitted the items required pursuant to § 35.920–3(c); or

(4) A combination of design (Step 2) and construction (Step 3) for a treatment works in the case of grants awarded after March 1, 1973:

(i) Where the Regional Administrator determines that compelling water quality enforcement considerations or serious public health problems warrant award of such a grant to assure expeditious construction of such treatment works, or

(ii) Where the Regional Administrator determines that award of such a grant will minimize administrative requirements in the case of projects not requiring a substantial amount of Federal assistance:

Provided, That the Regional Administrator determines that the applicant has satisfactorily completed appropriate preliminary plans and studies and has submitted the items required pursuant to § 35.920–3(b): *And further provided*, That any such grant award may be annulled unless detailed construction drawings and specifications are submitted to the Regional Administrator and approved prior to initiation of construction for the building and erection of the Project (Step 3).

(5) Design/construction of treatment works (Steps 2 and 3), *Provided*, That he determines that the applicant has satisfactorily completed appropriate preliminary plans and studies and has submitted the items required pursuant to § 35.920–3(d): *And further provided*, That any such grant award is subject to submission of detailed construction drawings and specifications to the Regional Administrator prior to initiation of and during construction.

§ 35.930–2 Grant amount.

The amount of a grant shall be set forth in the grant agreement and may not exceed the amount of funds available from the State allotments and reallotments pursuant to § 35.910 and may not exceed the amount certified by the State agency in accordance with § 35.915. Grant payments will be limited to the Federal share of allowable project costs incurred within the grant amount or any increases in such amount effected through grant amendments in accordance with § 35.955, pursuant to the negotiated payment schedule included in this grant agreement.

§ 35.930–3 Grant term.

The grant agreement shall establish the period within which the project must be completed, in accordance with § 30.305–1 of this chapter, subject to excusable delay.

§ 35.930–4 Project scope.

The grant agreement must define the scope of the project for which Federal assistance is awarded under the grant. The grant agreement shall define the project as the construction of an identified complete treatment works.

§ 35.930–5 Grant percentage.

The amount of any grant awarded under this subpart shall be 75 percent of the allowable cost of the project.

§ 35.935 Grant conditions.

In addition to the EPA General Grant Conditions (Appendix A to Subchapter B of this title and Part 30, Subpart C of this chapter), each grant for treatment works involving building and erection (Step 3) shall be subject to the following conditions:

§ 35.935–1 Nonrestrictive specifications.

No specification for bids or statement of work in connection with such works shall be written in such a manner as to contain proprietary, exclusionary, or discriminatory requirements other than those based upon performance, unless such requirements are necessary to test or demonstrate a specific thing or to provide for necessary interchangeability of parts and equipment, or at least two brand names or trade names of comparable quality or utility are listed and are followed by the words "or equal."

§ 35.935–2 Procurement.

Construction work will be performed by the fixed-price (lump sum) or fixed-rate (unit price) method, or a combination of these two methods, unless the Regional Administrator gives advance written approval to use some other method of contracting. The cost-plus-a percentage of cost method of contracting shall not be used. Adequate methods of advertising for and obtaining competitive sealed bids will be employed prior to award of the construction contract. The award of the contract will be made to the responsible bidder submitting the lowest responsive bid, which shall be determined without regard to State or local law whereby preference is given on factors other than the specification requirements and the amount of bid. The grantee must promptly transmit to the Regional Administrator copies of bid protests, decisions on such protests, and related correspondence. The Regional Administrator will cause appropriate review of grantee procurement methods to be made.

§ 35.935–3 Bonding and insurance.

On contracts for the building and erection of treatment works (Step 3) exceeding $100,000, each bidder must furnish a bid guarantee equivalent to 5 percent of the bid price. In addition, the contractor awarded either a design/construct contract or a construction contract for Step 3 must furnish performance and payment bonds, each of which shall be in an amount not less than 100 percent of the

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contract price and shall remain in effect for 1 year beyond the date of the final inspection and acceptance of the treatment works. Construction contracts less than $100,000 shall be subject to State and local requirements relating to bid guarantees, performance bonds, and payment bonds. In all cases, the contractor must maintain adequate fire and extended coverage, where appropriate, workmen's compensation, public liability and property damage, and "all-risk" builders risk insurance (including blasting, where appropriate) during the construction phase of the contract.

§ 35.935–4 State and local laws.

The construction of the project, including the letting of contracts in connection therewith, shall conform to the applicable requirements of State, territorial, and local laws and ordinances to the extent that such requirements do not conflict with Federal laws and this Subchapter.

§ 35.935–5 Davis-Bacon and related statutes.

The grantee must consult with the Regional Administrator prior to issuance of invitation for bids concerning compliance with Davis-Bacon and related statutes required pursuant to § 30.403 (a), (b), and (c) of this chapter.

§ 35.935–6 Equal employment opportunity.

Generall, contracts involving Step 3, of $10,000 and above, are subject to equal employment opportunity requirements under Executive Order 11246, including rules, regulations and orders issued thereunder. The grantee must consult with the Regional Administrator concerning equal employment opportunity requirements prior to issuance of invitation for bids where the cost of construction work is estimated to be more than $1,000,000, or where required by the grant agreement.

§ 35.935–7 Access.

Any construction contract must provide that representatives of the Environmental Protection Agency and the State will have access to the work whenever it is in preparation or progress and that the contractor will provide proper facilities for such access and inspection. The contract must also provide that the Grants Officer, the Comptroller General of the United States, or any authorized representative shall have access to any books, documents, papers, and records of the contractor which are pertinent to the project for the purpose of making audit, examination, excerpts, and transcriptions thereof.

§ 35.935–8 Supervision.

The grantee will provide and maintain competent and adequate engineering supervision and inspection of the project to insure that the construction conforms with the approved plans and specifications.

§ 35.935–9 Project completion.

The grantee agrees to expeditiously construct and complete the project or cause it to be constructed and completed in accordance with the grant agreement and plans and specifications approved by the Regional Administrator.

§ 35.935–10 Copies of contract documents.

In addition to the notification of project changes pursuant to § 30.900–1 of this chapter, a copy of any construction contract or modification thereof (including subcontracts) and of revisions to plans and specifications must be promptly submitted to the Regional Administrator.

§ 35.935–11 Project changes.

In addition to the notification of project changes required pursuant to § 30.900–1 of this chapter, prior approval by the Regional Administrator and the State agency is required for project changes which may (a) substantially alter the design and scope of the project, (b) alter the type of treatment to be provided, (c) substantially alter the location, size, capacity, or quality of any major item of equipment; or (d) increase the amount of Federal funds needed to complete the project: *Provided*, That prior EPA approval is not required for changes to correct minor errors, minor changes, or emergency changes. No approval of a project change pursuant to § 30.900 of this chapter or this section shall commit or obligate the United States to any increase in the amount of the grant or payments thereunder unless an approved request has been made. The preceding sentence shall not preclude submission or consideration of a request for a grant amendment pursuant to § 30.901 of this chapter.

§ 35.935–12 Operation and maintenance.

The grantee agrees that the treatment works will be maintained and operated in accordance with such requirements as the Administrator may publish from time to time and in accordance with appropriate methods, techniques, and practices for economic, efficient, effective maintenance and operation of such treatment works consistent with the design of such works, including, but not limited to, (a) an operation and maintenance manual for each facility, (b) an emergency operating and response program, (c) properly trained management, operations and maintenance personnel, (d) adequate budget for operation and maintenance, (e) operational reports, and (f) provisions for laboratory testing adequate to determine influent and effluent characteristics and removal efficiencies.

§ 35.940 Determination of allowable costs.

The grantee will be reimbursed, upon request, in accordance with § 35.945, for the Federal share of all necessary costs within the scope of the approved project and determined to be allowable in accordance with § 30.701 of this chapter, this subpart, and the grant agreement.

§ 35.940–1 Allowable project costs.

Allocable project costs of the grantee which are reasonable and necessary are allowable. Necessary costs may include, but are not limited to:

(a) Costs of salaries, benefits, and expendable material incurred by the grantee.

(b) Costs under construction contracts.

(c) Professional and consultant services.

(d) Facility planning directly related to the treatment works.

(e) Sewer system evaluation (§ 35.927).

(f) Project feasibility and engineering reports (§ 35.920–3(b) (3) and (4)).

(g) Relocation and land acquisition costs required pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4621 et seq., 4651 et seq., and regulations issued thereunder, Part 4 of this chapter.

(h) Environmental assessment (§ 35.920–3(b)(9)), including costs of public notices and hearings.

(i) Preparation of construction drawings, specifications, estimates, and construction contract documents.

(j) Landscaping.

(k) Supervision of construction work.

(l) Removal and relocation or replacement of utilities, for which the grantee is legally obligated.

(m) Materials acquired, consumed, or expended specifically for the project.

(n) A reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations.

(o) Development and preparation of an operation and maintenance manual.

(p) Project identification signs (§ 30.604–4 of this chapter).

§ 35.940–2 Unallowable costs.

Costs which are not necessary for the construction of a treatment works project are unallowable. Such costs include, but are not limited to:

(a) Basin or areawide planning not directly related to the project;

(b) Bonus payments not legally required for completion of construction in advance of a contractual completion date;

(c) Personal injury compensation or damages arising out of the project, whether determined by adjudication, arbitration, negotiation, or otherwise;

(d) Fines and penalties resulting from violations of, or failure to comply with, Federal, State, or local laws;

(e) Costs outside the scope of the approved project;

(f) Interest on bonds or any other form of indebtedness required to finance the grantee's share of project costs;

(g) Ordinary operating expenses of local government, such as salaries and expenses of a mayor, city council members, or city attorney, except as provided in § 35.940–4;

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(h) Site acquisition (for example, sewer rights-of-way, sewer treatment plant sites, sanitary landfills and sludge disposal areas), except as otherwise provided in § 35.940–3(a).

§ 35.940–3 Costs allowable, if approved.

Certain direct costs are sometimes necessary for the construction of a treatment works and are allowable if reasonable and approved by the Regional Administrator in the grant agreement or a grant amendment. Such costs include, but are not limited to:

(a) Land acquired after October 17, 1972, that will be an integral part of the treatment process or that will be used for ultimate disposal of residues resulting from such treatment (for example, land for spray irrigation of sewage effluent).

(b) Acquisition of an operable portion of a treatment works.

(c) Rate determinations studies required pursuant to § 35.925–11.

§ 35.940–4 Indirect costs.

Indirect costs of the grantee shall be allowable in accordance with an indirect cost agreement negotiated and incorporated in the grant agreement. An indirect cost agreement must identify those cost elements allowable pursuant to § 35.940–1. Where the benefits derived from a grantee's indirect services cannot be readily determined, a lump sum for overhead may be negotiated based upon a determination that such amount will be approximately the same as the actual indirect costs that may be incurred.

§ 35.940–5 Disputes.

The grantee should seek to resolve any questions relating to cost allowability or allocation at its earliest opportunity (if possible, prior to execution of the grant agreement). Final determinations concerning the allowability of costs shall be conclusive unless appealed within 30 days in accordance with the "Disputes" article (Article 7) of the EPA General Grant Conditions (Appendix A, Subchapter B of this title).

§ 35.945 Grant payments.

The grantee shall be paid on a reimbursable basis for the Federal share of allowable costs incurred within the scope of an approved project: *Provided*, That such payments may not exceed the payment schedule and the grant amount set forth in the grant agreement and any amendments thereto.

(a) *Initial payment.* Upon award of a grant, the grantee may request payment for the unpaid Federal share of allowable project costs, e.g., preliminary plans and studies, sewer system evaluations, or preparation of final construction drawings and specifications.

(b) *Interim payments.* The grantee may submit requests for payment for allowable costs incurred in accordance with the negotiated payment schedule included in the grant agreement. Upon receipt of a request for payment, the Regional Administrator shall cause to be disbursed from available appropriated funds such amounts as are necessary so that the total amount of Federal payments to the grantee for the project is equal to the Federal share of the actual or estimated allowable project costs incurred to date, as certified by the grantee in its most recent request for payment.

(c) *Adjustment.* At any time or times prior to final payment under the grant, the Regional Administrator may cause any request(s) for payment to be reviewed or audited. Each payment theretofore made shall be subject to reduction for amounts included in the related request for payment which are found, on the basis of such review or audit, not to constitute allowable costs. Any payment may be reduced for overpayments or increased for underpayments on preceding requests for payment.

(d) *Refund, rebates, credits, etc.* The Federal share of any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the grantee with respect to the project, to the extent that they are properly allocable to costs for which the grantee has been paid under a grant, must be credited to the current State allotment or paid to the United States. Reasonable expenses incurred by the grantee for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable under the grant when approved by the Regional Administrator.

(e) *Final payment.* On receipt and approval of the request for payment designated by the grantee as the "final payment request" and upon compliance by the grantee with all applicable requirements of this part (including paragraph (d) of this section) and the grant agreement, the Regional Administrator shall cause to be disbursed to the grantee any balance of allowable cost which has not been paid to the grantee. The final payment request must be submitted by the grantee promptly following completion of the project work but in no event later than 1 year (or such longer period as the Regional Administrator may in his discretion approve in writing) from the date of such completion. Prior to final payment under the grant, the grantee must execute and deliver an assignment to the United States, in form and substance satisfactory to the Regional Administrator, of the Federal share of refunds, rebates, credits or other amounts (including any interest thereon) properly allocable to costs for which the grantee has been paid by the Government under the grant, and a release discharging the United States, its officers, agents, and employees from all liabilities, obligations, and claims arising out of the project or under the grant, subject only to such exceptions which may be specified in the release.

§ 35.950 Suspension or termination of grants.

Grants may be suspended, in accordance with § 30.902 of this chapter and Article 4 of the General Grant Conditions (Appendix A to Subchapter B of this title), or terminated, in accordance with § 30.903 of this chapter and Article 5 of the General Grant Conditions (Appendix A to Subchapter B of this title): *Provided*, That the State agency shall be concurrently notified in writing of any such suspension or termination action.

§ 35.955 Grant amendments to increase grant amounts.

Grant agreements may be amended in accordance with § 30.901 of this chapter with respect to project changes which have been approved in accordance with § 30.900 of this chapter: *Provided*, That no grant agreement may be amended to increase the amount of a grant unless the State agency has issued a priority certification for the grant increase from available State allotments and reallotments in accordance with § 35.915.

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PART II



ENVIRONMENTAL PROTECTION AGENCY

■

STATE CONTINUING PLANNING PROCESS

Interim Regulations

No. 58—Pt. II——1

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Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

PART 130—STATE CONTINUING PLANNING PROCESS

Notice of Interim Regulations

Notice is hereby given that these regulations are set forth as interim regulations by the Environmental Protection Agency (EPA).

Section 303(e) of the Federal Water Pollution Control Act, as amended (86 Stat. 816; 33 U.S.C. 1314 (1972)), requires each State to submit a continuing planning process which is consistent with the Act. These proposed regulations describe the necessary elements of a State's continuing planning process. They also set forth procedures governing planning process adoption, submission, and revision and EPA approval. These regulations also provide a mechanism for States to satisfy portions of sections 208, 303(d) (Critical waters and maximum daily loads); 305(b) (State reports on water quality and related information, including nonpoint sources); 314 (Clean lakes); after June 30, 1973, 516(b) (Federal/State estimate of publicly owned treatment works construction needs); and they provide data for 305(a) and 104(a)(5) (Federal report on water quality).

Purpose. The purpose of the continuing planning process is to provide the States the water quality assessment and program management information necessary to make centralized coordinated water quality management decisions; to provide the strategic guidance for developing the State program submittal under section 106 of the Act; and to encourage water quality objectives which take into account overall State policies and programs, including those for land use and other related natural resources.

Goals of the State process. The goals of such a State process are to:

Provide a basis upon which the State's overall program (106) will be developed. This will be accomplished by developing an annual strategy, which will be based upon basin plans where they are completed and upon available information where the plans are not completed. This annual strategy will assist the State:

In directing resources—planning, monitoring, permitting, and financial assistance against water quality problems on a priority basis.

In establishing a coordinated schedule of action.

In reporting on progress in achieving program targets and scheduled milestones.

Insure that applicable water quality standards are attained. Where water quality standards violations occur an assessment will be made whether the application of Best Practical Control Technology (BPT) for industry and secondary treatment for municipalities will correct the water quality problem. If not, a maximum pollutant load will be calculated and individual discharge allocations will be made to meet these loads.

Specify the requirements for, and schedule the completion of, section 303 basin plans for all waters.

Insure public participation in the development of the planning process and of plans.

The complexity and timing of a plan for a specific area will be tailored to the problems of the area. No process need require individual plans to be more elaborate than is necessary for sound water quality management.

Classification of waters. To establish priorities, and to assist the State in assessing water quality problems, the process provides that the waters of each State will be classified according to the severity of pollution and the anticipated difficulty of developing and implementing remedial efforts. Waters will be classified into two classes:

(1) Water quality class: Any segment where it is known that water quality does not meet applicable water quality standards and is not expected to meet water quality standards even after the application of the effluent limitations required by sections 301(b)(1)(A) and 301(b)(1)(B) of the Act.

(2) Effluent limitation class: Any segment where water quality is meeting and will continue to meet applicable water quality standards or where there is adequate demonstration that water quality will meet applicable water quality standards after the application of the effluent limitations required by sections 301(b)(1)(A) and 301(b)(1)(B) of the Act.

Content of the planning process. The State continuing planning process provides for the development of basin plans. The process will:

Delineate planning areas and identify planning agencies.

Classify waters into water quality or effluent classes.

Identify the elements to be included in the plans in accordance with provisions of Part 131 of this chapter.

Provide a phased schedule for the completion of plans.

Establish a mechanism whereby the State's priorities for construction of publicly owned treatment works, for processing waste water discharge permits and for other program priorities will be established. The program priorities will be reported in the section 106 State program.

Provide a mechanism for determining investment requirements on publicly owned treatment works.

Provide a basis for assessing achievement of interim program milestones and final ambient results to be reported as part of the section 106 State program.

Each State will prepare its plans pursuant to the approved process schedule for plan preparation. If after his approval of the process the Regional Administrator finds that the State's approved process is deficient, he will confer with the State as to his findings and may request the State to revise its process as appropriate. If the State fails to make the necessary revisions in a timely manner, the Regional Administrator may withdraw his approval of the process, after consultation with the Administrator, if he finds that the process is grossly deficient. Such finding may be based, among other things, on a substantial failure of plans developed pursuant to the process to conform with the requirements of the Act, or on a substantial failure of the State to meet the approved phasing of planning, or on a substantial failure of the State to implement plans.

Federal properties, facilities, and activities are subject to Federal, State, interstate, and local standards and effluent limitations for control and abatement of pollution. The State's planning process should include provision for Federal sources. It is contemplated that Federal agencies will provide information to the States in accordance with procedures established by the Administrator.

Plan content. Companion regulations under section 303(e), Part 131 of this chapter, describe the preparation of plans pursuant to the planning process; Part 131 should be consulted during the development of the planning process under Part 130.

In effluent limitation classes the plan should contain discharge priorities, compliance schedules for discharges with permits and target abatement dates for other dischargers and other management information as may be necessary; while in water quality classes, in addition to the above information, the plan should establish maximum daily loads and should determine the greater effluent reductions required for dischargers to attain the water quality goals. Similarly, the monitoring and surveillance program will focus primarily on those areas where water quality problems are most severe and where existing information is most deficient.

Publication of regulations governing Part 131, Preparation of Plans Pursuant to State Continuing Planning Process, has been delayed. Publication of these regulations is expected shortly.

Prior to the adoption of final regulations within 180 days from this date, consideration will be given to comments, suggestions, or objections which may be submitted in writing to: Chief, Planning and Standards Branch; Office of Air and Water Programs; Room 1007, Crystal Mall Building No. 2, Environmental Protection Agency, Washington, D.C. 20460. All comments, suggestions, or objections received on or before May 11, 1973 will be considered.

These interim continuing planning process regulations shall become effective on March 27, 1973. It is necessary that these regulations take effect prior to a 30-day period after publication because States have begun to seek EPA approval of a State operated permit program as provided under section 402(b) of the Act, and because no such approval can be made unless a State's continuing planning process under section 303(e) of the Act has been first approved. See 40 CFR 124.93. For the same reason,

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notice of proposed rule making and public comment thereon, prior to the effective date of these regulations, is impracticable and contrary to the public interest.

WILLIAM D. RUCKELSHAUS,
Administrator.

MARCH 20, 1973.

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130.61 Relationship of continuing planning process with construction grants.

AUTHORITY: Secs. 303 and 501, 86 Stat. 816; 33 U.S.C. 1314 (1972).

Subpart A—Scope and Purpose; Definitions

§ 130.1 Scope and purpose.

(a) This part establishes regulations specifying procedural and other elements which must be present in a State continuing planning process to obtain approval of the Administrator pursuant to section 303(e) of the Federal Water Pollution Control Act, as amended, 86 Stat. 816, 33 U.S.C. 1314. This part provides that each State must achieve compliance with the requirements of this regulation not later than June 30, 1975, and includes specification of levels of compliance which shall be achieved prior to that date.

(b) The purpose of the continuing planning process is: To provide the States the water quality assessment and program management information necessary to make centralized coordinated water quality management decisions; to provide the strategic guidance for developing the State program submittal under section 106 of the Act; and to encourage water quality objectives which take into account overall State policies and programs, including those for land use and other related natural resources.

(c) The State continuing planning process is directed toward the attainment of water quality standards established pursuant to sections 301 and 302 of the Act to achieve the goals set forth in the Act. The planning process will develop an annual strategy for directing resources, establishing priorities, scheduling of actions; and reporting programs toward achievement of program objectives.

(d) The total State planning process is comprised of:

(1) The annual State strategy, which sets the State's major objectives and priorities for preparing basin plans and its annual program plan.

(2) Individual basin plans, which establish specific targets for controlling pollution in individual basins.

(3) The annual program plan (section 106), which establishes the results expected and the resources committed for the State program each year. The annual plan is developed from the objectives and priorities of the annual State strategy, and, when available, from the specific targets developed in basin plans.

(4) Reports, which measure program performance in achieving programmed results.

The "continuing planning process" is the process by which the State develops the foregoing plans and reports.

(e) This part describes:

(1) The general requirements for the planning process (Subpart B).

(2) The content of the basin plans (Subpart C).

(3) The preparation of the annual State strategy (Subpart D).

(4) The requirements for approval of the planning process (Subpart E).

(5) The relationship of the process to permit and construction grants programs (Subpart F).

§ 130.2 Definitions.

As used in this part, the following terms shall have the meanings set forth below.

(a) The term "Act" means the Federal Water Pollution Control Act, as amended, 33 U.S.C. ——, et seq.

(b) The term "EPA" means the U.S. Environmental Protection Agency.

(c) The term "Administrator" means the Administrator of the U.S. Environmental Protection Agency.

(d) The term "Regional Administrator" means the appropriate EPA Regional Administrator.

(e) The terms "continuing planning process," "planning process," and "process" mean the continuing planning process required by section 303(e) of the Act. Such process develops the State focal point for water quality management decisions. This includes phasing of plans to be prepared during fiscal years 1973, 1974, and 1975.

(f) The term "plan" means the water quality management plan for each hydrologic basin or other approved basin unit within a State. Such plan constitutes a mechanism for implementing applicable effluent limitations and water quality standards, and will consist of such components as are necessary for sound planning and program management in the basin covered by the plan.

Requirements for the preparation of such plans are described in Part 131 of this chapter.

(g) The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, but does not include schedules of compliance.

(h) The terms "schedule of implementation" and "schedule of compliance" are synonymous and mean a description for each source of remedial measures to be accomplished and a sequence of actions or operations leading to compliance with applicable effluent limitations, water quality standards and other requirements of State and Federal law.

(i) The term "municipal needs" means the total capital funding required for construction of publicly owned treatment works, as defined in section 212(2) (A) and (B) of the Act, that are required to meet national water quality objectives of sections 301 and 302 of the Act.

(j) The term "National Pollutant Discharge Elimination System" means the Federal permitting system authorized under section 402 of the Act including any State or interstate program which has been approved by the Administrator, in whole or in part, pursuant to section 402 of the Act.

(k) The term "phasing of planning" means the State schedule approved by the Regional Administrator for the preparation of plans, pursuant to the continuing planning process, during the fiscal years 1973, 1974, and 1975.

(l) The term "basin" means the streams, rivers, and tributaries and the total land and surface water area contained in one of the 267 major and minor basins defined by EPA, or other basin unit as agreed upon by the State(s) and the Regional Administrator. Unless specified otherwise, "basin" shall refer only to those portions within the borders of a single State.

(m) The term "segment" means a portion of a basin the surface waters of which have common hydrologic characteristics (or flow regulation patterns); common natural physical, chemical, and biological processes, and which have common reactions to external stresses, e.g., discharge of pollutants.

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(n) The term "cluster" means two or more dischargers which discharge pollutants in such a way that the combination of their effluents causes or may cause water quality standards violations.

(o) The term "significant discharger" means any discharger who is causing serious or critical water quality problems relative to the segment to which it discharges.

(p) The definitions of the following terms contained in section 502 of the Act shall be applicable to such terms as used in this part unless the context otherwise requires: "State," "State water pollution control agency," "navigable waters," "point source," and "discharge."

Subpart B—General Requirements

§ 130.10 Process coverage.

(a) The process shall provide for the preparation of plans for all waters within the State, as provided in Subpart C.

(b) The process shall establish phasing of plans to be accomplished during the fiscal years 1973, 1974, and 1975, as provided in Subpart D.

(c) The process shall provide for the method by which the State shall coordinate all water quality planning, programing and management.

(d) The process shall provide the method by which the State shall coordinate its water quality management planning with related State and local comprehensive, and functional and project planning activities, including land use and other natural resources planning activities.

(e) The process shall provide the method by which the State shall coordinate its water quality management planning with that of its neighboring States.

§ 130.11 Classification of segments.

(a) This section establishes a classification system which the process shall employ to categorize segments for purposes of preparing a plan. The requirements of this part and Part 131 of this chapter vary according to the classification of each segment, so that the time and resources to be expended in developing the plan for that segment, as well as the substantive content of the plan, will be commensurate with the severity of the water pollution problem.

(b) This classification of segments shall also be utilized in constructing the State Discharge Priority List developed in Subpart D of this part.

(c) The classification shall be based upon measured in-stream water quality, where available.

(d) Each segment shall be classified as follows:

(1) *Water quality class.* Any segment where it is known that water quality does not meet applicable water quality standards and which is not expected to meet water quality standards even after the application of the effluent limitations required by sections 301(b)(1)(A) and 301(b)(1)(B) of the Act.

(2) *Effluent limitation class.* Any segment where water quality is meeting and will continue to meet applicable water quality standards or where there is adequate demonstration that water quality will meet applicable water quality standards after the application of the effluent limitations required by sections 301(b)(1)(A) and 301(b)(1)(B) of the Act.

(3) Any classification shall reflect any necessary allowance for anticipated economic and demographic growth over at least a 5-year period and an additional allowance reflecting the degree of precision and validity of the analysis upon which the classifications are based. Where the analysis is less precise or there is uncertainty concerning growth projections, a greater margin of safety shall be required for the assignment of any segment to an Effluent Limitation Class. In determining the additional allowance, consideration should be given to economic and demographic projections that are utilized in other State programs. (See § 131.210.)

(e) The classification of all waters should be included in the submission of the planning process by the Governor of each State to the Regional Administrator.

(1) Submission and approval or disapproval shall also be in accordance with §§ 130.50 and 130.52.

(2) Review and revisions of such classifications shall be made in accordance with § 130.54.

§ 130.12 Planning agencies.

(a) (1) The Governor of a State shall designate a State agency responsible for conduct of the required planning. The Governor may designate a local or interstate agency to conduct all or any portion of the planning within each basin and may assign planning responsibilities under the process and Part 131 of this chapter to any such designated agency.

(2) The process shall set forth the criteria followed in designating planning agencies pursuant to paragraph (a) of this section and in determining the jurisdiction thereof. Locally elected officials of general purpose units of governments, and other pertinent local and areawide organizations within the jurisdiction of the potentially designated agency shall be consulted prior to any designation. The criteria for such determinations shall be included.

(b) (1) The initial submission shall include a specific designation of each planning agency responsible for conducting all or any portion of the planning pursuant to the process within each basin. Each designation shall include:

(i) The agency's name, address, and name of director.

(ii) The agency's jurisdiction (geographical coverage and extent of planning responsibilities).

(2) In the event that all or a portion of a plan is to be undertaken by an agency other than the State water pollution control agency, evidence from such other agency shall be supplied which shows acceptance of such designation and that agency's intent to comply within the times set forth in the process.

(3) The State may make additional assignments, as set forth in this section, from time to time. Such designations and delegations shall be accomplished by revising the process as provided in § 130.54.

§ 130.13 Legal authorities.

The State shall specify that it has or will seek to obtain legal authority, as necessary, to prepare and adopt plans pursuant to the planning process.

§ 130.14 Public participation.

Each process or any revision thereof shall be developed with provision for public participation in accordance with section 101(e) of the Act, and any regulation issued by the Administrator thereunder. Public participation with adequate opportunity for public hearing upon proper showing shall be required on significant elements of the planning process including proposed State strategy and priority lists developed under the continuing planning process pursuant to section 108 regulations.

§ 130.15 Separability.

If any provision of this part, or the application of any provision of this part to any person or circumstances, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this part, shall not be affected thereby.

Subpart C—Contents of Basin Plans

§ 130.20 Level of complexity of plans.

(a) The process shall provide that plans for water quality segments will contain all the following parts while plans for effluent limitation segments shall include items (4), (5), and (6). See § 130.11 for segment classification.

(1) An assessment of total maximum daily loads necessary to meet water quality standards for the specific criteria being violated;

(2) An assessment of nonpoint source pollution and, where applicable, needed control measures;

(3) Already established effluent limit requirements for significant dischargers and target limits, not previously established, for significant dischargers that are required to achieve water quality standards;

(4) An assessment of needs for publicly owned treatment works;

(5) An inventory and categorization of significant individual discharges;

(6) Already established schedules of compliance and target dates of abatement for significant dischargers not on a compliance schedule.

(b) The process will allow for basin plans containing one or more water quality segments and/or one or more effluent limitation segments. The level of planning shall be related to requirements of segments within the basin.

§ 130.21 Establishment of planning areas (basins).

The process shall provide for establishment of planning areas, as follows:

(a) Each planning area (basin) shall be the area within the basin boundary.

(b) Except as provided in paragraph (c) of this section, the basin boundaries

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shall be those identified as minor basins in the EPA water quality information system.

(c) The process may provide for the establishment of planning boundaries differing from those identified in the EPA basin system. Any such differing boundaries shall be submitted to the Regional Administrator for approval.

(d) The initial submission shall include a map of adequate scale clearly delineating the boundaries of each proposed basin within the State and an identification of the basin's segments. (See § 131.201 of this chapter.)

§ 130.22 Relation between plans and other planning provisions.

The process shall provide that each basin plan will be coordinated with each applicable water quality subplan (see § 131.204 of this chapter) and other applicable State and local plans including land use and natural resources plans for the basin.

§ 130.23 Water quality standards.

The process shall provide that each basin plan will set forth the water quality standards applicable to the navigable waters covered by the plan. (See § 131.202 of this chapter.) The process, including the basin plans developed as part of the process, shall be the one used by the States to assist in making the necessary revisions of water quality standards to bring them into conformance with the goals of the Act.

§ 130.24 Total maximum daily loads.

The process shall provide that for each water quality segment the plan will establish total maximum permissible daily loads, including consideration of nonpoint source contributions, required to meet the applicable violated water quality standard as provided in § 131.205(a) of this chapter.

§ 130.25 Individual point source discharge allocation; impact on water quality.

(a) The process shall provide that each plan will identify, locate, and describe each significant point source of pollutants and any other point source as is appropriate in accordance with § 131.206(a) of this chapter.

(b) The process shall provide that in water quality segments in each plan target pollutant discharge allocations and thermal discharge allocations for point, and nonpoint sources where feasible, will be established as provided in § 131.206 (b) of this chapter.

(c) The process shall provide that each plan will establish controls over the disposition of all residual waste from any municipal, industrial, or other water or waste water treatment processing, as prescribed in § 131.203(e) of this chapter.

§ 130.26 Schedules of compliance.

The process shall provide that each plan will develop schedules of compliance or target dates of abatement as prescribed in § 131.207 of this chapter.

§ 130.27 Inventory of individual dischargers.

(a) The process shall provide that each plan will include an inventory of significant dischargers and categorization of these dischargers by segment. Such inventory and categorization shall be used:

(1) In determining projects for construction, with Federal financial assistance, of publicly owned waste water facilities required to meet the applicable requirements of the Act.

(2) For the issuance of permits to municipal, industrial, and other point source discharges.

§ 130.28 Assessment of municipal needs for publicly owned water treatment works.

The process shall provide that each plan will assess the needs for publicly owned waste treatment works in the basin, as prescribed in § 131.210 of this chapter.

§ 130.29 Nonpoint sources of pollutants.

The process shall provide that in water quality segments each plan will identify, evaluate, and, to the extent possible, establish controls over nonpoint sources of pollutants, as prescribed in § 131.211 of this chapter.

§ 130.30 Monitoring and surveillance.

(a) The process shall provide for a monitoring and surveillance program which is designed to assure collection of data necessary to establish and review water quality goals, determine maximum daily loads, load allocations and effluent limitations, as described in §§ 130.24 and 130.25; establish the relationship between water quality and individual discharges and identify non-point sources of pollutants.

(b) Each monitoring and surveillance program shall include a program for producing the annual reports required under section 305(b), beginning with the report required by January 1, 1975. (See § 130.55.)

§ 130.31 Intergovernmental cooperation.

(a) The process shall provide that in the preparation of basin plans, areawide and local planning inputs will be reviewed and will be included in the basin plan as appropriate. (See § 130.22.)

(b) The process shall provide that local governments within the State will be encouraged to utilize existing or carry out appropriate institutional or other arrangements with other local governments, in the same State, for cooperation in the development and implementation of plans.

(c) The process shall provide for interstate cooperation whenever a plan involves the interests of more than one State. Such provision shall include the following assurances:

(1) That when a plan is under development in the State for an area affecting or affected by waters of one or more other States, the planning agency will cooperate with each such other State in the analyses and planning pertinent to such area including but not limited to problem assessment and priorities and schedule for plan preparation. (See §§ 130.41 and 130.42.)

(2) That when a plan is under development in another State for an area affecting or affected by waters of the State, the State will cooperate with such other State in the analyses and planning pertinent to such area.

(d) The use of interstate agencies in all phases of interstate cooperation in water quality management planning is encouraged.

(e) The process shall describe the mechanism for approval of water quality management plans involving interstate waters.

§ 130.32 Adoption of plans.

The process shall provide that the plans will be officially adopted, after appropriate public hearings, as the official water quality management plans of the State and that the plans may be revised, after public hearings, as appropriate. Hearings will be held on the plan except for those portions of the plan where hearings were previously held; for example, on segments where public hearings were held in conjunction with the issuance of permits. (See §§ 131.401 and 131.404 of this chapter.)

Subpart D—Preparation of Annual Strategy

§ 130.40 State strategy.

(a) The planning process shall provide for the preparation of an annual State strategy. The Governor or his designee(s) shall be provided with the opportunity for involvement in the identification and resolution of significant issues in the formulation of the State strategy. The strategy shall contain:

(1) A statewide assessment of water quality problems and the causes of these problems;

(2) A listing of the geographical or discharger priorities of these problems;

(3) A listing of the priorities and scheduling of permits, construction grants, basin plans, and other appropriate program actions;

(b) The strategy should be based upon information derived from completed plans when available and from available information in areas where plans are not complete.

(c) The strategy shall be submitted as part of the section 106 State program submittal as required pursuant to § 130.55.

§ 130.41 Problem assessment and priorities.

(a) Based on the annual statewide assessment of the water quality problems and causes of these problems developed pursuant to § 130.40(a)(1), the State shall rank each segment in priority order, taking into account:

(1) Severity of pollution problems.

(2) Population affected.

(3) Need for preservation of high quality waters.

(4) National priorities as determined by the Administrator.

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(b) Segments of the same basin need not be listed together; however, their ranking in the State list shall be consistent with their ranking in any approved plan.

(c) This ranking shall generally govern the development of plans, construction of publicly owned treatment works, issuance of permits, and other program activities.

§ 130.42 Schedule for plan preparation.

(a) The process shall establish a schedule for plan preparation. The schedule shall provide a sequence for phasing the completion of plans to assure the orderly implementation of the planning process, consistent with existing planning efforts and needs and the expanding capabilities for planning in the State. Such schedule shall determine the State's priorities for the development of plans pursuant to the process during the period covered by the schedule. It shall provide for an initial number of plans to be completed not later than June 30, 1973; an additional number of plans to be completed not later than June 30, 1974; and for remaining plans to be completed by June 30, 1975.

(b) The schedule of basin plans shall be determined following consideration of:

(1) The ranking of segments pursuant to § 130.41 and the number of water quality segments in the basin; and

(2) Any other factors that the State may deem appropriate in developing and scheduling plans for sound water quality management.

§ 130.43 State municipal discharge inventory.

(a) Each State shall establish not later than June 30, 1973, and shall thereafter maintain, a State Municipal Discharge Inventory. Such an inventory shall set forth for the State a ranking of significant muncipal dischargers. The State Municipal Discharge Inventory shall be used in establishing priorities and output estimates for municipal facilities construction and in issuing municipal permits to be developed as part of the State program submittal required under section 106 of the Act. This list shall become the list of municipalities required in § 35.915(b) of this chapter for award of construction grants.

(b) The State Muncipal Discharge Inventory shall be revised and submitted at least once each year as required pursuant to § 130.55.

(c) The State Municipal Discharge Inventory shall be prepared as follows:

(1) The State shall rank and categorize significant municipal dischargers consistent with the segment rankings contained in § 130.41.

(2) Dischargers of the same basin need not be listed together; however, their ranking and categorization in the State list shall be in accordance with their ranking and categorization in any approved plan.

§ 130.44 State industrial discharge inventory.

Each State shall establish not later than June 30, 1973, and shall thereafter maintain, a State Industrial Discharge Inventory. The procedures used in § 130.43 for constructing and submitting the municipal inventory shall be used in developing the industrial discharge inventory. The State Industrial Discharge Inventory shall be used in establishing priorities and output estimates for issuing industrial permits to be developed as part of the State program submittal required under section 106 of the Act.

Subpart E—Requirements for Approval of Planning Process; Reports

§ 130.50 Submission of process.

(a) The Governor of each State shall submit to the Regional Administrator the continuing planning process pursuant to section 303(e) of the Act.

(b) Submission shall be accomplished by delivering five copies of the planning process to the Regional Administrator and a letter from the Governor notifying him of such action.

§ 130.51 Contents of process submittal.

(a) The submittal shall at a minimum contain the following:

(1) A map of the State showing basins and segments.

(2) A listing of the classifications of segments.

(3) A description of the planning method employed to formulate plans.

(4) A listing of the planning agency or agencies that will perform the planning.

(5) A schedule for plan preparation.

(6) A description of participation of the public in the development of the process, including participation of local governments.

(7) A specification that legal authorities required to prepare and adopt plans required by the planning process exist or will be obtained.

(8) A description of reports including the State strategy that will be submitted under section 106 of the Act.

§ 130.52 Planning process review; approval or disapproval.

The Regional Administrator shall approve or disapprove the planning process submitted pursuant to § 130.50 within 30 days after the date of submission, as follows:

(a) If the Regional Administrator determines that the planning process conforms with the requirements of the Act and this Part 130, he shall notify the Governor by letter.

(b) If the Regional Administrator determines that the process fails to conform with the requirements of the Act and this Part 130, he shall so notify the Governor by letter and shall state:

(1) The specific revisions necessary to obtain approval of the process; and

(2) The time period for resubmission of the revised process or portions thereof.

§ 130.53 Prohibition of approval of certain planning processes.

The Regional Administrator shall not approve any continuing planning process which will not result in timely plans, for all navigable waters within the State, that conform with the requirements of section 303(e) of the Act and Part 131 of this chapter, relating to such plans. Substantial failure of any plan or plans prepared pursuant to the process to conform with such applicable requirements may indicate that the planning process by which such plan or plans were developed was deficient and should be revised. Failure to accomplish necessary revisions of the planning process may result in withdrawal of approval of part or all of the process. The approval of the State participation in the National Pollutant Discharge Elimination System will be withheld or withdrawn if the process is not approved. (See § 130.60.)

§ 130.54 Revisions.

(a) The State shall annually review its continuing planning process and shall revise the process as may be necessary to assure the development and maintenance of current plans which will accomplish national water quality objectives in conformity with the requirements of the Act.

(b) (1) The Regional Administrator shall from time to time review each State's approved planning process for the purpose of insuring that such planning process is at all times adequate to assure the goal of paragraph (a) of this section.

(2) The State shall revise its process as necessary upon a finding by the Regional Administrator and notification by him to the State that the process is substantially inadequate to assure the goal of paragraph (a) of this section.

(3) The State shall revise its process within 60 days following notification by the Regional Administrator pursuant to subparagraph (2) of this paragraph or by such later date as may be prescribed by the Regional Administrator after consultation with the State.

(c) Revisions of the process shall be submitted in accordance with § 130.50.

(d) Review and approval or disapproval of revisions of the process shall be carried out in accordance with § 130.52.

§ 130.55 Reports.

The annual State strategy including the State Problem Assessment and Priorities described in § 130.41, the State Municipal Discharge Inventory described in § 130.43, and the State Industrial Discharge Inventory described in § 130.44, as well as any other program progress report which may be required, shall be submitted as part of the State program submission under section 106 of the Act.

Subpart F—Relationship of Process To Permit and Construction Grant Programs

§ 130.60 Relationship of continuing planning process with State participation in National Pollutant Discharge Elimination System.

(a) State participation in the National Pollutant Discharge Elimination System, other than the interim participation provided in section 402(a)(5) of the Act, shall not be approved for any State which does not have an approved continuing planning process.

(b) Approval of State participation in the National Pollutant Discharge Elimination System may be withdrawn from

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any State if approval of the continuing planning process is withdrawn following approval, including withdrawal of process approval based on gross failure to comply with the schedule for plan preparation (§§ 130.40 and 130.41) or on failure of plans to conform with the process (§ 130.52).

(c) In connection with any permit issued to a significant discharger in a cluster where water quality violations occur, or are suspected to occur, and for which no plan has been approved by the Regional Administrator, the water quality impact of the discharges of all members, municipal and industrial, of the cluster to which such major discharger belongs, must be considered in connection with the issuance of such disharger's permit.

§ 130.61 Relationship of continuing planning process with construction grants.

(a) Before approving a grant for any project for any treatment works under section 201(g) of the Act after June 30, 1973, the Regional Administrator shall determine, pursuant to 40 CFR 35.925–2, that such works are in conformity with any applicable plan approved in accordance with this part and Part 131 of this chapter. Disapproval by the Regional Administrator of a plan, or relevant portion thereof, for the area where a project is to be located may constitute grounds for not approving a grant for such project.

(b) The Regional Administrator may suspend or terminate a grant for any project for any treatment works in accordance with § 35.950 of this chapter if he determines that such grant is inconsistent with a plan, for the area of the project, approved subsequent to approval of the grant.

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